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**CHAPTER NO. 300**

[HB 195]

AN ACT INCREASING THE PENALTIES FOR DRIVING UNDER THE INFLUENCE OR DRIVING WITH AN ILLEGAL ALCOHOL CONCENTRATION; AMENDING SECTIONS 61-2-302, 61-5-208, 61-8-421, 61-8-442, 61-8-714, 61-8-722, AND 61-8-733, 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 61-2-302, MCA, is amended to read:

**“61-2-302. Establishment of driver rehabilitation and improvement program — department to contract with private entities — participation by offending drivers.** (1) (a) The department shall establish by administrative rules a driver rehabilitation and improvement program or programs that may consist of classroom instruction in rules of the road, driving techniques, defensive driving, driver attitudes and habits, actual on-the-road driver’s training, and other subjects or tasks designed to contribute to proper driving attitudes, habits, and techniques.

(b) The rules must:

(i) provide for the local program courses to be operated by private entities;

(ii) develop a procedure for certifying private entities as driver rehabilitation and improvement course providers;

(iii) establish the criteria that private entities must meet in order to be certified by the department; and

(iv) provide for an alternative driver rehabilitation and improvement procedure for drivers who live in areas where a course is not offered.

(2) Official participation in the driver rehabilitation and improvement program is limited to those persons whose license to operate a motor vehicle in the state of Montana is:

(a) subject to suspension or revocation as a result of a violation of the traffic laws of this state or, unless otherwise provided by the sentencing court, is suspended under 45-5-624(2)(b);

(b) revoked and they have:

(i) completed at least 3 months of a 1-year revocation ~~or, except that if revocation is for a second or subsequent violation of 61-8-401 or 61-8-406, have provided the department with proof of compliance with the ignition interlock device restriction imposed under 61-5-208~~ *the person is not eligible to participate in the driver rehabilitation and improvement program;* or

(ii) completed 1 year of a 3-year revocation; and

(iii) met the requirements for reobtaining a Montana driver’s license; or

(c) subject to suspension as provided in 61-11-204(3).

(3) Notwithstanding any provision of this part inconsistent with any other law of the state of Montana, the enforcement of any suspension or revocation order that constitutes the basis for any person's participation in the driver rehabilitation and improvement program provided for in this section may be stayed if that person complies with the requirements established for the driver rehabilitation and improvement program and meets the eligibility requirements of subsection (2).

(4) In the event that a person's driver's license has been surrendered before the person's selection for participation in the driver rehabilitation and improvement program, the license may be returned upon receipt of the person's agreement to participate in the program.

(5) The stay of enforcement of any suspension or revocation order must be terminated and the order of suspension or revocation enforced if a person declines to participate in the driver rehabilitation and improvement program or fails to meet the attendance or other requirements established for participation in the program.

(6) This part does not create a right to be included in any program established under this part.

(7) The department and the entity with which the department contracts under subsection (1)(b) shall establish separate fee schedules that may be charged to those persons participating in the driver improvement and rehabilitation program. The fees must be collected separately by the department and by the entity with which the department contracts under subsection (1)(b).

(8) The fees collected by the department under subsection (7) must be used to help defray costs incurred by the department in administering the program and in contracting with private entities as provided in subsection (1). The department may not use the fees collected under subsection (7) for any other purpose.

(9) A person may be referred to this program by a driver improvement analyst, city judge, justice of the peace, youth court judge, judge of a district court of the state, or hearing examiner of the department.

(10) (a) Except as provided in *subsections (2)(b)(i) and (10)(b)*, the department may issue a restricted probationary license to any person who enrolls and participates in the driver rehabilitation and improvement program. Upon issuance of a probationary license under this section, the licensee is subject to the restrictions set forth on the license.

(b) The department may not issue a restricted probationary license that would permit an individual to drive a commercial motor vehicle during a period in which:

(i) the individual is disqualified from operating a commercial motor vehicle under state or federal law; or

(ii) the individual's driver's license or driving privilege is revoked, suspended, or canceled.

(11) It is a misdemeanor for a person to operate a motor vehicle in any manner in violation of the restrictions imposed on a restricted license issued to the person under this section."

**Section 2.** Section 61-5-208, MCA, is amended to read:

**“61-5-208. Period of suspension or revocation — probationary license — ignition interlock device required allowed on second or subsequent first offense.** (1) The department may not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways for a period of more than 1 year, except as otherwise permitted by law.

(2) (a) Except as provided in 61-2-302, 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) When a person is convicted or forfeits bail or collateral not vacated for ~~the~~ a first offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs or for ~~the~~ a first offense of operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, the department shall, upon receiving a report of conviction or forfeiture of bail or collateral not vacated, suspend the driver's license or driving privilege of the person for a period of 6 months. Upon receiving a report of a conviction or forfeiture of bail or collateral for a second, third, or subsequent offense within 5 years of the first offense, the department shall revoke the license or driving privilege of the person for a period of 1 year and, ~~upon issuance of any restricted~~ may not issue a probationary license during the period of revocation, ~~restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device.~~ If the 1-year revocation period passes and the person has not completed a chemical dependency education course, treatment, or both, as ordered by the sentencing court, the license revocation remains in effect until the course, treatment, or both, are completed.

(c) For the purposes of subsection (2)(b), a person is considered to have committed a second, third, or subsequent offense if fewer than 5 years have passed between the date of an offense that resulted in a prior conviction and the date of the offense that resulted in the most recent conviction.

(3) (a) If ~~a~~ the person pays the reinstatement fee required in 61-2-107 and provides the department proof of compliance with an ignition interlock restriction imposed under 61-8-442, the department shall stay the license suspension of a person who has been convicted of a first violation of 61-8-401 or 61-8-406 and return the person's driver's license. The stay must remain in effect until the period of suspension has expired and any required chemical dependency education course, treatment, or both, have been completed.

(b) If the department receives notice from a court, peace officer, or ignition interlock vendor that the person has violated the court-imposed ignition interlock restriction by, including but not limited to operating a motor vehicle not equipped with the device, tampering with the device, or removing the device before the period of restriction has expired, the department shall lift the stay and reinstate the license suspension for the remainder of the time period. The department may not issue a probationary driver's license to a person whose license suspension has been reinstated because of violation of an ignition interlock restriction.

(4) The period for all revocations made mandatory by 61-5-205 is 1 year except as provided in subsection (2).

(5) The period of revocation for a person convicted of any offense that makes mandatory the revocation of the person's driver's license commences from the date of conviction or forfeiture of bail.

(6) If a person is convicted of a violation of 61-8-401 or 61-8-406 while operating a commercial motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-802."

**Section 3.** Section 61-8-421, MCA, is amended to read:

**"61-8-421. Forfeiture procedure.** (1) A motor vehicle forfeited under 61-8-733 must be seized by the arresting agency within 10 days after the conviction and disposed of as provided in Title 44, chapter 12, part 2. Except as provided in this section, the provisions of Title 44, chapter 12, part 2, apply to the extent applicable.

(2) Forfeiture proceedings under 44-12-201(1) must be instituted by the arresting agency within 20 days after the seizure of the motor vehicle.

(3) For purposes of 44-12-203 and 44-12-204, there is a rebuttable presumption of forfeiture. The owner of the motor vehicle may rebut the presumption by proving a defense under 61-8-733(2) or by proving that the owner was not convicted of a ~~third~~ *second* or subsequent offense under 61-8-401 or 61-8-406. It is not a defense that the convicted person owns the motor vehicle jointly with another person.

(4) (a) For purposes of 44-12-206, the proceeds of the sale of the motor vehicle must be distributed first to the holders of security interests who have presented proper proof of their claims, up to the amount of the interests or the amount received from the sale, whichever is less, and the remainder to the general fund of the arresting agency.

(b) A holder of a security interest may petition the sentencing court for transfer of title to the motor vehicle to the holder of the security interest if the secured interest is equal to or greater than the estimated value of the motor vehicle.

(5) Actions the court may take under 44-12-205(3) to protect the rights of innocent persons include return of the motor vehicle without a sale to an owner who is unable to present an adequate defense under this section but is found by the court to be without fault."

**Section 4.** Section 61-8-442, MCA, is amended to read:

**"61-8-442. Driving under the influence of alcohol or drugs — driving with excessive alcohol concentration — ignition interlock device discretionary on first offense.** (1) In addition to the punishments provided in 61-8-714 and 61-8-722, regardless of disposition, the court may ~~restrict for a defendant~~ *restrict for a defendant person convicted of a first offense under 61-8-401 or 61-8-406 and granted a probationary license restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device during the period that the person is granted a probationary license and require the defendant person to pay the reasonable cost of leasing, installing, and maintaining the device if:*

(a) the court determines that approved ignition interlock devices are reasonably available; and

(b) the ~~defendant's~~ *person's* blood alcohol concentration at the time of the arrest was 0.18% or greater; and

~~(c)(2) the~~ *If a defendant has not been previously person is convicted of a second or subsequent violation of 61-8-401 or 61-8-406, in addition to the punishments provided in 61-8-714 and 61-8-722, regardless of disposition, the court shall order that each motor vehicle owned by the person at the time of the offense be either:*

(a) seized and subjected to the forfeiture procedure provided under 61-8-421;  
or

(b) during the 12-month period beginning with the end of the period of driver's license revocation, equipped with a functioning ignition interlock device and require the person to pay the reasonable cost of leasing, installing, and maintaining the device if the court determines that approved ignition interlock devices are reasonably available.

~~(2)~~(3) Any restriction imposed under this section must be included in a report of the conviction made by the court to the department in accordance with 61-11-101 and placed upon the person's driving record maintained by the department in accordance with 61-11-102.

~~(3)~~(4) The duration of a restriction imposed under this section must ~~run parallel to the time period for suspension of the driver's license of the defendant in accordance with 61-2-107, 61-5-205, and 61-5-208 and must be monitored by the department.~~

**Section 5.** Section 61-8-714, MCA, is amended to read:

**"61-8-714. Penalty for driving under influence of alcohol or drugs — first through third offense.** (1) A person convicted of a violation of 61-8-401 shall be punished by imprisonment for not less than 24 consecutive hours or more than 6 months and shall be punished by a fine of not less than ~~\$100~~ \$300 or more than ~~\$500~~ \$1,000. The initial 24 hours of the imprisonment term must be served in the county jail and may not be served under home arrest. The mandatory imprisonment sentence may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the ~~defendant's~~ person's physical or mental well-being. Except for the initial 24 hours of the imprisonment term, notwithstanding 46-18-201(2), the imprisonment sentence may be suspended for a period of up to 1 year pending successful completion of court-ordered chemical dependency assessment, education, or treatment by the ~~defendant~~ person.

(2) On a second conviction, the person shall be punished by a fine of not less than ~~\$300~~ \$600 or more than ~~\$500~~ \$1,000 and by imprisonment for not less than 7 days or more than 6 months. At least 48 hours of the imprisonment term must be served consecutively in the county jail and may not be served under home arrest. ~~Three~~ The imposition or execution of the first 5 days of the imprisonment sentence may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being. Except for the initial ~~3~~ 5 days of the imprisonment term, notwithstanding 46-18-201(2), the imprisonment sentence may be suspended for a period of up to 1 year pending successful completion of a chemical dependency treatment program by the ~~defendant~~ person.

(3) On the third conviction, the person shall be punished by imprisonment for a term of not less than 30 days or more than 1 year and by a fine of not less than ~~\$500~~ \$1,000 or more than ~~\$1,000~~ \$5,000. At least 48 hours of the imprisonment term must be served consecutively in the county jail and may not be served under home arrest. The imposition or execution of the first 10 days of the imprisonment sentence may not be suspended. The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending successful completion of a chemical dependency treatment program by the ~~defendant~~ person."

**Section 6.** Section 61-8-722, MCA, is amended to read:

**“61-8-722. Penalty for driving with excessive alcohol concentration — first through third offense.** (1) A person convicted of a violation of 61-8-406 shall be punished by imprisonment for not more than 10 days and shall be punished by a fine of not less than ~~\$100~~ \$300 or more than ~~\$500~~ \$1,000.

(2) On a second conviction of a violation of 61-8-406, the person shall be punished by imprisonment for not less than ~~48 consecutive hours~~ 5 days, to be served in the county jail and not on home arrest, or more than 30 days and by a fine of not less than ~~\$300~~ \$600 or more than ~~\$500~~ \$1,000. *The imposition or execution of the first 5 days of the imprisonment sentence may not be suspended.*

(3) On a third conviction of a violation of 61-8-406, the person shall be punished by imprisonment for not less than ~~48 consecutive hours~~ 10 days, to be served in the county jail and not on home arrest, or more than 6 months and by a fine of not less than ~~\$500~~ \$1,000 or more than ~~\$1,000~~ \$5,000. *The imposition or execution of the first 10 days of the imprisonment sentence may not be suspended.”*

**Section 7.** Section 61-8-733, MCA, is amended to read:

**“61-8-733. Driving under influence of alcohol or drugs — driving with excessive alcohol concentration — forfeiture of vehicle.** (1) On the ~~third~~ *second* or subsequent conviction of a violation of 61-8-401 or 61-8-406, the court, in addition to the punishments provided in 61-8-714 and 61-8-722 and any other penalty imposed by law, shall order ~~the~~ *that each* motor vehicle owned ~~and operated~~ by the person at the time of the offense ~~to be either seized and subjected to the procedure provided under 61-8-421 or equipped with an ignition interlock device as provided under 61-8-442.~~

(2) A vehicle used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or omission established by the owner to have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state or the United States.

(3) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person’s interest if the person did not know and could not have reasonably known of the unlawful possession, use, or other act on which the forfeiture is sought.”

**Section 8. Effective date.** [This act] is effective on passage and approval.

**Section 9. Applicability.** [This act] applies to persons sentenced for offenses committed on or after [the effective date of this act].

Approved April 14, 2003

## CHAPTER NO. 301

[HB 230]

AN ACT PROVIDING THAT AN EMPLOYER MAY PAY WAGES DUE IN THE ENSUING PAY PERIOD WHEN AN EMPLOYEE SUBMITS A TIMESHEET AFTER THE EMPLOYER’S DEADLINE FOR PROCESSING TIMESHEETS FOR A PARTICULAR PAY PERIOD; ELIMINATING ARCHAIC LANGUAGE



PROVIDING THAT WAGES OWED TO EMPLOYEES WHO ARE ABSENT FROM WORK ON THE REGULAR PAY DATE MUST BE PAID AT ANY TIME AFTER THE DATE OF REGULAR PAYMENT AND PROVIDING THAT THE LAW IS INAPPLICABLE TO CERTAIN EMPLOYEES WHO BY CUSTOM RECEIVE WAGES MONTHLY; AMENDING SECTION 39-3-204, 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 39-3-204, MCA, is amended to read:

**“39-3-204. Payment of wages generally.** (1) Except as provided in ~~subsection (4) subsections (2) and (3)~~, every employer of labor in the state of Montana shall pay to each employee the wages earned by the employee in lawful money of the United States or checks on banks convertible into cash on demand at the full face value of the checks, and ~~no~~ a person for whom labor has been performed may *not* withhold from any employee any wages earned or unpaid for a longer period than 10 business days after the wages are due and payable. However, reasonable deductions may be made for board, room, and other incidentals supplied by the employer, whenever the deductions are a part of the conditions of employment, or other deductions provided for by law.

~~(2) If at the time of payment of wages any employee is absent from the regular place of labor, the employee is entitled to payment at any time thereafter.~~

~~(3) Provisions of this section do not apply to any professional, supervisory, or technical employee who by custom receives wages earned at least once monthly.~~

(4)(2) Wages may be paid to the employee by electronic funds transfer or similar means of direct deposit if the employee has consented in writing or electronically, if a record is retained, to be paid in this manner. However, an employee may not be required to use electronic funds transfer or similar means of direct deposit as a method for payment of wages.

(3) *If an employee submits a timesheet after the employer's established deadline for processing employee timesheets for a particular time period and the employer does not pay the employee within the 10-day period provided for in subsection (1), the employer may pay the employee the wages due in the ensuing pay period. An employer may not withhold payment of the employee's wages beyond the next ensuing pay period. If there is not an established time period or time when wages are due and payable, the pay period is presumed to be semimonthly in length.*

**Section 2. Effective date — applicability.** [This act] is effective on passage and approval and applies to timesheets filed on or after [the effective date of this act].

Approved April 14, 2003

## CHAPTER NO. 302

[HB 293]

AN ACT PROHIBITING RACIAL PROFILING; REQUIRING LAW ENFORCEMENT AGENCIES TO ADOPT A DETAILED WRITTEN POLICY THAT CLEARLY DEFINES THE ELEMENTS CONSTITUTING RACIAL

PROFILING AND THAT PROHIBITS RACIAL PROFILING; REQUIRING THE POLICY TO INCLUDE A PROCEDURE FOR INVESTIGATING COMPLAINTS OF RACIAL PROFILING; REQUIRING A LAW ENFORCEMENT AGENCY TO TAKE APPROPRIATE ACTION AGAINST A PEACE OFFICER VIOLATING THE POLICY AGAINST RACIAL PROFILING; DEFINING "RACIAL PROFILING"; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1. Racial profiling prohibited — definitions.** (1) A peace officer may not engage in racial profiling.

(2) The race or ethnicity of an individual may not be the sole factor in:

(a) determining the existence of probable cause to take into custody or arrest an individual; or

(b) constituting a particularized suspicion that an offense has been or is being committed in order to justify the detention of an individual or the investigatory stop of a motor vehicle.

(3) Each municipal, county, consolidated local government, and state law enforcement agency shall adopt a detailed written policy that clearly defines the elements constituting racial profiling. Each agency's policy must prohibit racial profiling. The policy must include a procedure that the law enforcement agency will use to address complaints concerning racial profiling. The policy must be available for public inspection during normal business hours.

(4) If an investigation of a complaint of racial profiling reveals that a peace officer was in direct violation of the law enforcement agency's written policy prohibiting racial profiling, the law enforcement agency shall take appropriate action against the peace officer consistent with applicable laws, rules, ordinances, or policies.

(5) For the purposes of this section, the following definitions apply:

(a) "Peace officer" has the meaning provided in 46-1-202.

(b) "Racial profiling" means the detention, official restraint, or other disparate treatment of an individual solely on the basis of the racial or ethnic status of the individual.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 44, chapter 2, and the provisions of Title 44, chapter 2, apply to [section 1].

**Section 3. Effective date.** [This act] is effective July 1, 2003.

Approved April 14, 2003

## CHAPTER NO. 303

[HB 419]

AN ACT REQUIRING A RAILROAD CORPORATION TO ERECT SIGNS IN ADVANCE OF A CROSSING AT WHICH A LOCOMOTIVE HORN AND BELL MUST BE SOUNDED; REQUIRING THE HORN AND BELL TO BE SOUNDED FOR AT LEAST 15 SECONDS PRIOR TO A LOCOMOTIVE OCCUPYING A CROSSING IF THE TRAIN IS STOPPED WITHIN A CERTAIN DISTANCE OF THE CROSSING; CLARIFYING THE MEANING

OF THE PHRASE "PUBLIC HIGHWAY, PUBLIC ROAD, OR PUBLIC RAILROAD CROSSING" FOR THE PURPOSES OF DETERMINING WHEN A LOCOMOTIVE HORN AND BELL MUST BE SOUNDED; AMENDING SECTION 69-14-562, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 69-14-562, MCA, is amended to read:

**"69-14-562. Regulation of safety on railroads.** (1) A railroad corporation within this state is guilty of a misdemeanor and upon conviction is subject to the penalties provided in subsection (2) if the corporation:

(a) neglects to provide comfortable and convenient cars or coaches for the transportation of its passengers and their baggage or safe cars for the transportation of express matter and freight;

(b) runs a train over an unsafe bridge, trestlework, or aqueduct;

(c) fails to have a locomotive in use by it equipped with a properly functioning horn and bell;

(d) permits a locomotive to approach a public highway, public road, or public railroad crossing without causing the locomotive horn and bell to be sounded at a point 1,320 feet from the crossing; ~~the; or horn and bell to be sounded from the specified point until the crossing is reached. If the owner or permitholder of a private crossing makes a written request to the railroad corporation to have the locomotive horn and bell sounded at the private crossing, the railroad shall comply with the request. The owner or permitholder is not subject to any liability as a result of not making a request.~~

(e) willfully fails to make any report required by law.

(2) *For the purposes of subsection (1)(d):*

(a) *the horn and bell must be sounded from the specified point until the crossing is occupied, but if a train has stopped within 1,320 feet of a crossing, the horn and bell must be sounded for a minimum of 15 seconds prior to the train occupying the crossing;*

(b) *the railroad corporation shall erect and maintain a sign at a minimum of 1,320 feet in advance of a crossing at which the horn and bell are required to be sounded to notify the locomotive crew in advance of a crossing that requires the locomotive horn and bell to be sounded;*

(c) *if the owner or permitholder of a private crossing makes a written request to the railroad corporation to have the locomotive horn and bell sounded at a private crossing, the railroad shall comply with the request, but the owner or permitholder is not subject to any liability as a result of not making a request; and*

(d) *the phrase "public highway, public road, or public railroad crossing" means that the easement, right-of-way, or fee title for the public highway, public road, or public railroad crossing is held in the name of a federal, state, tribal, or local government entity on both sides of the crossing and that the easement, right-of-way, or fee title is recorded in the office of the clerk and recorder in the county where the crossing is located.*

~~(2)~~(3) Upon conviction of the offenses provided in subsection (1), a railroad corporation is subject to a fine of:

- (a) \$1,000 for the first offense;
- (b) \$2,000 for the second violation of the same provision; and
- (c) not less than \$5,000 or more than \$10,000 for subsequent violations of a provision for which it has twice been found guilty.”

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

Approved April 14, 2003

## CHAPTER NO. 304

[HB 456]

AN ACT SUBSTITUTING THE TERM “PREDOMINANT AGGRESSOR” FOR THE TERM “PRIMARY AGGRESSOR” IN THAT PART OF THE PARTNER OR FAMILY MEMBER ARREST STATUTE THAT RELATES TO MUTUAL AGGRESSION; AND AMENDING SECTION 46-6-311, MCA.

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

**Section 1.** Section 46-6-311, MCA, is amended to read:

**“46-6-311. Basis for arrest without warrant — arrest of ~~primary~~ predominant aggressor.** (1) A peace officer may arrest a person when a warrant has not been issued if the officer has probable cause to believe that the person is committing an offense or that the person has committed an offense and existing circumstances require immediate arrest.

(2) (a) The summoning of a peace officer to a place of residence by a partner or family member constitutes an exigent circumstance for making an arrest. Arrest is the preferred response in partner or family member assault cases involving injury to the victim, use or threatened use of a weapon, violation of a restraining order, or other imminent danger to the victim.

(b) When a peace officer responds to a partner or family member assault complaint and if it appears that the parties were involved in mutual aggression, the officer shall evaluate the situation to determine who is the ~~primary~~ predominant aggressor. If, based on the officer's evaluation, the officer determines that one person is the ~~primary~~ predominant aggressor, the officer may arrest only the ~~primary~~ predominant aggressor. A determination of who the ~~primary~~ predominant aggressor is must be based on but is not limited to the following considerations, regardless of who was the first aggressor:

(i) the prior history of violence between the partners or family members, if information about the prior history is available to the officer;

(ii) the relative severity of injuries received by each person;

(iii) whether an act of or threat of violence was taken in self-defense;

(iv) the relative sizes and apparent strength of each person;

(v) the apparent fear or lack of fear between the partners or family members; and

(vi) statements made by witnesses.”

Approved April 14, 2003

**CHAPTER NO. 305**

[HB 482]

AN ACT PROVIDING THAT A PROVISION IN A CONSTRUCTION CONTRACT THAT REQUIRES ONE PARTY TO THE CONTRACT TO INDEMNIFY ANOTHER PARTY TO THE CONTRACT, OR THE OTHER PARTY'S OFFICERS, EMPLOYEES, OR AGENTS, FOR THE OTHER PARTY'S LIABILITY, LOSSES, DAMAGES, OR COSTS IS VOID AS AGAINST THE PUBLIC POLICY OF THIS STATE; AUTHORIZING A CONSTRUCTION CONTRACT TO CONTAIN A PROVISION REQUIRING A PARTY TO A CONTRACT TO PURCHASE A PROJECT-SPECIFIC INSURANCE POLICY; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

**Section 1. Construction contract indemnification provisions.** (1)

Except as provided in subsections (2) and (3), a construction contract provision that requires one party to the contract to indemnify, hold harmless, insure, or defend the other party to the contract, or the other party's officers, employees, or agents, for liability, damages, losses, or costs that are caused by the negligence, recklessness, or intentional misconduct of the other party or the other party's officers, employees, or agents is void as against the public policy of this state.

(2) A construction contract may contain a provision:

(a) requiring one party to the contract to indemnify, hold harmless, or insure the other party to the contract, or the other party's officers, employees, or agents, for liability, damages, losses, or costs, including but not limited to reasonable attorney fees, only to the extent that the liability, damages, losses, or costs are caused by the negligence, recklessness, or intentional misconduct of a third party or of the indemnifying party or the indemnifying party's officers, employees, or agents; or

(b) requiring a party to the contract to purchase a project-specific insurance policy, including but not limited to an owner's and contractor's protective insurance, a project management protective liability insurance, or a builder's risk insurance.

(3) This section does not apply to indemnity of a surety by a principal on a construction contract bond or to an insurer's obligation to its insureds.

(4) As used in this section, "construction contract" means an agreement for architectural services, alterations, construction, demolition, design services, development, engineering services, excavation, maintenance, repair, or other improvement to real property, including any agreement to supply labor, materials, or equipment for an improvement to real property.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 28, chapter 2, part 21, and the provisions of Title 28, chapter 2, part 21, apply to [section 1].

**Section 3. Effective date — applicability.** [This act] is effective July 1, 2003, and applies to construction contracts entered into or renewed on or after July 1, 2003.

Approved April 14, 2003

**CHAPTER NO. 306**

[HB 494]

AN ACT REVISING THE LAWS GOVERNING LICENSURE OF PHYSICIANS; PROVIDING FOR TEMPORARY LICENSURE OF PERSONS IN AN APPROVED RESIDENCY PROGRAM UPON CERTAIN CONDITIONS; AND AMENDING SECTIONS 37-3-304 AND 37-3-305, MCA.

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

**Section 1.** Section 37-3-304, MCA, is amended to read:

**“37-3-304. Practice authorized by temporary certificate.** (1) ~~The A~~ temporary certificate, which may be issued to any citizen or to an alien otherwise qualified for a physician’s certificate ~~and which may be issued for a period not to exceed 1 year, subject to renewal for additional periods of 1 year but not to exceed five such renewals, at the discretion of the board,~~ authorizes the holder to perform one or more of the acts ~~embraced~~ *listed* in 37-3-102(6) in a manner reasonably consistent with ~~his~~ *the holder’s* training, skill, and experience, ~~subject, nevertheless,~~ to all specifications, conditions, and limitations imposed by the board.

(2) *A temporary certificate may not be issued for a period that exceeds 1 year. However, except as provided in subsection (3), a temporary certificate may be renewed, at the board’s discretion, for additional 1-year periods, but may not be renewed more than five times.*

(3) *A person meeting the requirements of 37-3-305(5) may be granted a limited temporary certificate for a period of 3 months, which may be extended at the board’s discretion upon a showing of good cause for a period not to exceed 3 months.”*

**Section 2.** Section 37-3-305, MCA, is amended to read:

**“37-3-305. Qualifications for licensure.** (1) Except as provided in ~~subsection~~ *subsections (4) and (5)*, a person may not be granted a physician’s license to practice medicine in this state unless the person:

- (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 postgraduate program of at least 2 years or, in the opinion of the board, has had experience or training that is at least the equivalent of a 2-year postgraduate program;
- (d) has had a completed application file reviewed by a board member and, at the discretion of the board member, has made a personal appearance before the board; and
- (e) is able to communicate, in the opinion of the board, in the English language.

(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 person may not be granted a temporary license to practice medicine in this state unless the person:

- (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 postgraduate program of at least 2 years or, in the opinion of the board, has had experience or training that is at least the equivalent of a 2-year postgraduate program; and

(d) is able, in the opinion of the board, to communicate in the English language.

(4) The 2-year minimum requirements in subsections (1)(c) and (3)(c) do not apply to a person who:

(a) has completed an approved internship of at least 1 year or in the opinion of the board has had experience or training that is at least the equivalent of a 1-year internship;

(b) is a resident in good standing with the Montana family practice residency program; and

(c) is seeing patients under the supervision of a physician who possesses a current, unrestricted license to practice medicine in this state.

(5) *The 2-year minimum requirements in subsections (1)(c) and (3)(c) do not apply to a person who:*

*(a) has completed an approved internship of at least 1 year or, in the opinion of the board, has had experience or training that is at least the equivalent of a 1-year internship;*

*(b) is a resident in good standing with a program accredited by the accreditation council for graduate medical education or the American osteopathic association;*

*(c) in the course of an approved rotation of the person's residency program, is seeing patients under the supervision of a physician who possesses a current, unrestricted license to practice medicine in this state;*

*(d) makes application to the department on a form prescribed by the board; and*

*(e) pays a fee set by the board, as provided in 37-3-308."*

Approved April 14, 2003

## CHAPTER NO. 307

[HB 501]

AN ACT REVISING THE PROVISIONS RELATED TO LICENSURE OF RADIOLOGIC TECHNOLOGISTS; PROVIDING FOR APPROVAL BY THE BOARD OF RADIOLOGIC TECHNOLOGISTS OF A LICENSED RADIOLOGIC TECHNOLOGIST TO PERFORM THE FUNCTIONS OF A RADIOLOGIST ASSISTANT UNDER SUPERVISION OF A RADIOLOGIST; DEFINING TERMS; AND AMENDING SECTIONS 37-14-102 AND 37-14-301, MCA.

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

**Section 1.** Section 37-14-102, MCA, is amended to read:

**"37-14-102. Definitions.** In this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Board" means the board of radiologic technologists provided for in 2-15-1738.

(2) "Department" means the department of labor and industry.

(3) "*General supervision*" means the procedure is furnished under the radiologist's overall direction and control. However, the radiologist's presence is not required at the site during the performance of the procedure.

~~(3)~~(4) "License" means an authorization issued by the department to perform x-ray procedures on persons.

~~(4)~~(5) "Licensed practitioner" means a person licensed or otherwise authorized by law to practice medicine, dentistry, denturistry, dental hygiene, podiatry, osteopathy, or chiropractic.

~~(5)~~(6) "Limited permit technician" means a person who does not qualify for the issuance of a license under the provisions of this chapter but who has demonstrated, to the satisfaction of the board, the capability of performing specified high-quality x-ray procedures without endangering public health and safety.

~~(6)~~(7) "Performance of x-ray procedures" means the involvement or completion of any portion of an x-ray procedure that may have an effect on the patient's accumulated x-ray radiation exposure, including positioning of the patient, technique selection, selection of ancillary equipment, initiation of exposure, and darkroom procedures.

~~(7)~~(8) "Permit" means an authorization that may be granted by the board to perform x-ray procedures on persons when the applicant's qualifications do not meet standards required for the issuance of a license.

~~(8)~~(9) "Radiologic technologist" means a person, other than a licensed practitioner, who has qualified under the provisions of this chapter for the issuance of a license to perform diagnostic x-ray procedures on persons and who performs the following functions in connection with the diagnostic procedure:

(a) operates x-ray equipment to reveal the internal condition of patients for the diagnosis of fractures, diseases, and other injuries;

(b) prepares and positions patients for x-ray procedures;

(c) selects the proper radiographic technique for visualization of specific internal structures of the human body;

(d) selects the proper ancillary equipment to be used in the x-ray procedure to enhance the visualization of the desired structure;

(e) prepares film processing solutions and develops or processes the exposed x-ray film; and

(f) inspects, maintains, and performs minor repairs to x-ray equipment.

(10) "*Radiologist*" means a person who is licensed to practice medicine under Title 37, chapter 3, and who is board eligible or board certified by the American board of radiology.

(11) "*Radiologist assistant*" means an advanced-level licensed radiologic technologist who works under the general supervision of a radiologist to enhance patient care by assisting the radiologist in the diagnostic imaging environment."

**Section 2.** Section 37-14-301, MCA, is amended to read:



**“37-14-301. Limitation of license authority — exemptions.** (1) ~~No~~ A person may *not* perform x-ray procedures on a person unless licensed or granted a limited permit under this chapter, with the following provisos:

(a) Licensure is not required for:

(i) a student enrolled in and attending a school or college of medicine, osteopathy, podiatry, dentistry, dental hygiene, chiropractic, or radiologic technology who applies x-ray radiation to persons under the specific direction of a person licensed to prescribe ~~such~~ examinations or treatment;

(ii) a person administering x-ray examinations related to the practice of dentistry or dentistry, ~~provided such if the~~ person is certified by the board of dentistry as having passed an examination testing ~~his~~ *the person's* proficiency to administer x-ray examinations; or

(iii) a person who performs only darkroom procedures and is under the supervision of a licensed radiologic technologist or radiologist or is able to show evidence of completion of formal training in darkroom procedures as established by rule.

(b) ~~Nothing in this~~ This chapter ~~shall~~ *may not* be construed to limit or affect in any respect the practice of their respective professions by ~~duly~~ licensed practitioners.

(2) A person licensed as a radiologic technologist may perform x-ray procedures on persons for medical, diagnostic, or therapeutic purposes under the specific direction of a person licensed to prescribe ~~such~~ *x-ray* procedures.

(3) A radiologic technologist licensed under this chapter may inject contrast media and radioactive isotopes (radio-nuclide material) intravenously upon request of a ~~duly~~ licensed practitioner. In the case of contrast media, the licensed practitioner requesting the procedure or the radiologist must be immediately available within the x-ray department. ~~Such injections~~ *Injections* must be for diagnostic studies only and not for therapeutic purposes. ~~The~~ *Except as provided in [section 3],* permitted injections include peripheral intravenous injections but specifically exclude intra-arterial or intracatheter injections. An uncertified radiologic technologist, a limited permit technician under 37-14-306, or an individual who is not licensed or authorized under another licensing act may not perform any of the activities listed in this subsection.”

**Section 3. Radiologist assistant — scope of practice — board approval.** (1) A person licensed under this chapter who has completed an advanced academic program encompassing a nationally recognized radiologist assistant curriculum or certification and who has a radiologist-directed clinical preceptorship certificate may practice as a radiologist assistant upon approval by the board.

(2) (a) The specific duties allowed for a radiologist assistant may be defined by the board by rule. The rules must be consistent with guidelines adopted by the American college of radiology, the American society of radiologic technologists, the American registry of radiologic technologists, and subsection (2)(b).

(b) The rules must specify the functions that a radiologist assistant may perform in connection with diagnostic procedures under the general supervision of a radiologist, including radiology procedures, invasive procedures, procedures as delegated by a radiologist, and the types of injection of contrast media and radioactive isotopes (radio-nuclide) material allowed.

(c) A radiologist assistant may not interpret images, make diagnoses, or prescribe medications or therapies.

(3) A radiologist assistant may also be referred to as a "radiology practitioner assistant".

**Section 4. Codification instruction.** [Section 3] is intended to be codified as an integral part of Title 37, chapter 14, part 3, and the provisions of Title 37, chapter 14, part 3, apply to [section 3].

Approved April 14, 2003

## CHAPTER NO. 308

[HB 555]

AN ACT CHANGING THE AMOUNT THAT MAY BE CHARGED FOR A PAST-DUE LOAN PAYMENT FROM 5 PERCENT OF THE AMOUNT PAST DUE TO THE GREATER OF 5 PERCENT OF THE AMOUNT PAST DUE OR \$15; AND AMENDING SECTION 32-5-301, MCA.

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

**Section 1.** Section 32-5-301, MCA, is amended to read:

**"32-5-301. Charges, refunds, penalties, filing fees.** (1) A licensee or holder of a supplementary license under this part may contract for and receive on any loan of money interest charges as provided under 31-1-112.

(2) Charges in subsection (1) must be computed at the applicable rates on the full, original principal amount of the loan from the date of the loan to the due date of the final scheduled installment irrespective of the fact that the loan is payable in installments. The charges must be added to the principal of the loan and may not be discounted or deducted from the principal or paid or received at the time the loan is made. For the purpose of computing charges for a fraction of a month, a day is considered one-thirtieth of a month.

(3) (a) When any loan contract, new loan, renewal, or otherwise for a period of not more than 61 months is paid in full by cash 1 month or more before the final installment date, the licensee shall refund or credit the borrower with that portion of the total charges that is due the borrower as determined by schedules prepared under the rule of 78ths or sum of the digits principle as follows: the amount of the refund or credit must be as great a proportion of the total charges originally contracted for as the sum of the consecutive monthly balances of the contract scheduled to follow the date of prepayment bears to the sum of all the consecutive monthly balances of the contract, both sums to be determined according to the payment schedule originally contracted for.

(b) When any loan contract, new loan, renewal, or otherwise for a period of more than 61 months is paid in full by cash 1 month or more before the final installment date, the licensee shall refund or credit the borrower with that portion of the total charges that is due the borrower that is applicable to all fully unexpired months in the contract as originally scheduled or, if deferred, as deferred, following the date of prepayment. For this purpose the applicable charge is the charge that would have been earned for that contract if charges had not been precomputed, by applying to the unpaid principal balance, by the actuarial method, the annual percentage rate disclosed pursuant to federal law, based on the assumption that all payments were made as originally scheduled.

For all loans that may be subject to this section, charges are computed initially in the same manner used to determine the annual percentage rate.

(4) If the contract so provides, the additional charge for any amount past due according to the original terms of the contract, whether by reason of default or extension agreement, may be *the greater of 5% of the amount past due or \$15*, and that amount may be charged only once.

(5) (a) The licensee may include in the principal amount of any loan:

(i) the actual fees paid a public official or agency of the state for filing, recording, or releasing any instrument securing the loan; or

(ii) the premium for insurance in lieu of filing or recording any instrument securing the loan to the extent that the premium does not exceed the fees that would otherwise be payable for filing, recording, or releasing any instrument securing the loan.

(b) The licensee may include in the principal amount of any loan bona fide charges related to real estate security and paid to third parties, including:

(i) fees or premiums for title examination, title insurance, or similar purposes, including survey;

(ii) fees for preparation of a deed, settlement statement, or other documents;

(iii) fees for notarizing deeds and other documents;

(iv) appraisal fees;

(v) fees for credit reports; and

(vi) fees paid to a trustee for release of a trust deed.

(6) Further or other charges may not be directly or indirectly contracted for or received by any licensee except those specifically authorized by this chapter. A licensee may not divide into separate parts any contract made for the purpose of or with the effect of obtaining charges in excess of those authorized by this chapter. If any amount in excess of the charges permitted by this chapter is charged, contracted for, and received, except as the result of an accidental and bona fide error of computation, the licensee may not collect or receive any charges.

(7) Subsections (2), (3), and (6) of this section apply only to loans on which charges are made on an add-on basis and do not apply to loans on which charges are made on an interest-bearing basis.

(8) If a consumer loan is prepaid in whole or in part for any reason, including after a default, prior to the final payment due date and the amount of prepayment exceeds 10% of the then-outstanding principal balance of the loan, a licensee may charge a prepayment charge as follows:

(a) 10% of the then-outstanding principal balance of the loan if the prepayment occurs during the first 6 months after the date of the loan;

(b) 7% of the then-outstanding principal balance of the loan if the prepayment occurs more than 6 months after the date of the loan, but on or before 18 months after the date of the loan; or

(c) 3.5% of the then-outstanding principal balance of the loan if the prepayment occurs more than 18 months after the date of the loan, but before 61 months after the date of the loan.

(9) A prepayment charge may not be collected if:

- (a) the prepayment results solely because of the enforcement of a "due on sale" clause in a real estate mortgage or deed of trust that secures the loan;
- (b) the loan provided is prepaid by another loan made by the same licensee or an affiliate of the licensee; or
- (c) prepayment occurs as a result of a payment made by a credit life insurance policy or other insurance policy."

Approved April 14, 2003

## CHAPTER NO. 309

[HB 579]

AN ACT PROVIDING THAT THE PARTIES TO A DIVORCE OR SEPARATION IN WHICH A TEMPORARY INJUNCTION IS SOUGHT MUST BE INFORMED BY THE COURT AT THE HEARING ON THE INJUNCTION THAT THE INJUNCTION MIGHT LIMIT OR RESULT IN LIMITS ON THE RIGHTS OF ONE OR BOTH PARTIES RELATING TO FIREARMS UNDER STATE AND FEDERAL LAW; CLARIFYING THAT A PARTY AGAINST WHOM AN INJUNCTION IS SOUGHT IS ENTITLED TO NOTICE AND HEARING; PROVIDING THAT A PERSON CHARGED WITH AN OFFENSE MUST BE INFORMED BY THE COURT THAT CONVICTION MAY RESULT IN THE LOSS OF VARIOUS RIGHTS REGARDING FIREARMS UNDER STATE AND FEDERAL LAW; AND AMENDING SECTIONS 40-4-121 AND 46-7-102, MCA.

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

**Section 1.** Section 40-4-121, MCA, is amended to read:

**"40-4-121. Temporary order for maintenance or support, temporary injunction, or temporary restraining order.** (1) In a proceeding for dissolution of marriage or for legal separation or in a proceeding for disposition of property or for maintenance or support following dissolution of the marriage by a court that lacked personal jurisdiction over the absent spouse, either party may move for temporary maintenance, temporary support of a child of the marriage entitled to support, or a temporary family support order. When a party is receiving public assistance, as defined in 40-5-201~~(12)~~, for the minor children at issue or when a party receives public assistance during the life of a temporary family support order, the temporary family support order must designate separately the amounts of temporary child support and temporary maintenance, if any. The temporary child support order or the designated child support portion of the family support order must be determined as required in 40-4-204. The motion must be accompanied by an affidavit setting forth the factual basis for the motion, the amounts requested, a list of marital estate liabilities, a statement of sources of income of the parties and of a child of the marriage entitled to support, and, in the case of a motion for a temporary family support order, a proposal designating the party responsible for paying each liability. If ordered by a court, a temporary family support order must, without prejudice, direct one or both parties to pay, out of certain income sources, liabilities of the marital estate during the pendency of the action, including maintenance liabilities for a party or support of a child of the marriage entitled to support. If income sources are insufficient to meet the marital estate periodic liabilities, the temporary family support order may direct that certain liabilities

be paid from assets of the marital estate. At any time during the proceedings, the court may order any temporary family support payments to be designated as temporary maintenance, temporary child support, or partial property distribution, retroactive to the date of the motion for a temporary family support order. When a party obtains public assistance, as defined in 40-5-201(12), or applies for services under Title IV-D of the Social Security Act, after the court has issued a temporary family support order, the petitioner shall promptly move the court for designation of the parts, if any, of the temporary family support order that are maintenance and child support and the court shall promptly so designate, determining the child support obligation as required in 40-4-204.

(2) As a part of a motion for temporary maintenance, temporary support of a child, or a temporary family support order or by independent motion accompanied by affidavit, either party may request *that* the court ~~to~~ issue a temporary injunction for any of the following relief:

(a) restraining a person from transferring, encumbering, concealing, or otherwise disposing of any property, except in the usual course of business or for the necessities of life, and; if so restrained, requiring the person to notify the moving party of any proposed extraordinary expenditures made after the order is issued;

(b) restraining both parties from cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of any insurance or other coverage, including life, health, automobile, and disability coverage held for the benefit of a party or a child of a party for whom support may be ordered;

(c) enjoining a party from molesting or disturbing the peace of the other party or of any family member or from stalking, as defined in 45-5-220;

(d) excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm would otherwise result;

(e) enjoining a party from removing a child from the jurisdiction of the court;

(f) ordering a party to complete counseling, including alcohol or chemical dependency counseling or treatment;

(g) providing other injunctive relief proper in the circumstances; and

(h) providing additional relief available under Title 40, chapter 15.

(3) When the clerk of the district court issues a summons pursuant to this chapter, the clerk shall issue and include with the summons a temporary restraining order:

(a) restraining both parties from transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether jointly or separately held, without either the consent of the other party or an order of the court, except in the usual course of business or for the necessities of life. The restraining order must require each party to notify the other party of any proposed extraordinary expenditures at least 5 business days before incurring the expenditures and to account to the court for all extraordinary expenditures made after service of the summons. However, the restraining order may not preclude either party from using any property to pay reasonable attorney fees in order to retain counsel in the proceeding.

(b) restraining both parties from cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of any insurance or other coverage, including life, health, automobile, and disability coverage held for the benefit of a party or a child of a party for whom support may be ordered.

However, nothing in this subsection (3) adversely affects the rights, title, or interest of a purchaser, encumbrancer, or lessee for value if the purchaser, encumbrancer, or lessee does not have actual knowledge of the restraining order.

(4) A person may seek the relief provided for in subsection (2) without filing a petition under this part for a dissolution of marriage or legal separation by filing a verified petition requesting relief under Title 27, chapter 19, part 3. Any temporary injunction entered under this subsection must be for a fixed period of time, not to exceed 1 year, and may be modified as provided in Title 27, chapter 19, part 4, and 40-4-208, as appropriate.

(5) The court may issue a temporary restraining order for a period not to exceed 20 days without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if an order is not issued until the time for responding has elapsed.

(6) *The party against whom a temporary injunction is sought must be served with notice and a copy of the motion and is entitled to a hearing on the motion.* A response may be filed within 20 days after service of notice of motion or at the time specified in the temporary restraining order.

(7) At the time of the hearing, the court shall:

(a) *inform both parties that the temporary injunction may contain a provision or provisions that limit the rights of one or both parties relating to firearms under state law or a provision or provisions that may subject one or both parties to state or federal laws that limit their rights relating to firearms; and*

(b) determine whether good cause exists for the injunction to continue for 1 year.

(8) On the basis of the showing made and in conformity with 40-4-203 and 40-4-204, the court may issue a temporary injunction and an order for temporary maintenance, temporary child support, or temporary family support in amounts and on terms just and proper in the circumstance.

(9) A temporary order or injunction, entered pursuant to Title 40, chapter 15, or this section:

(a) may be revoked or modified on a showing by affidavit of the facts necessary to revocation or modification of a final decree under 40-4-208;

(b) terminates upon order of the court or when the petition is voluntarily dismissed and, in the case of a temporary family support order, upon entry of the decree of dissolution; and

(c) when issued under this section, must conspicuously bear the following: "Violation of this order is a criminal offense under 45-5-220 or 45-5-626."

(10) When the petitioner has fled the parties' residence, notice of the petitioner's new residence must be withheld except by order of the court for good cause shown."

**Section 2.** Section 46-7-102, MCA, is amended to read:

**"46-7-102. Duty of court.** (1) The judge shall inform the defendant:

(a) of the charge or charges against the defendant;

(b) of the defendant's right to counsel;

(c) of the defendant's right to have counsel assigned by a court of record in accordance with the provisions of 46-8-101;

(d) of the general circumstances under which the defendant may obtain pretrial release;

(e) of the defendant's right to refuse to make a statement and the fact that any statement made by the defendant may be offered in evidence at the defendant's trial; ~~and~~

(f) that conviction may result in the loss of various rights regarding firearms under state and federal law; and

~~(g)~~(g) of the defendant's right to a judicial determination of whether probable cause exists if the charge is made by a complaint alleging the commission of a felony.

(2) The judge shall admit the defendant to bail as provided by law."

Approved April 14, 2003

## CHAPTER NO. 310

[HB 580]

AN ACT PROVIDING THE PUBLIC SERVICE COMMISSION WITH EXPEDITED COMPLAINT AUTHORITY FOR INTERCONNECTION AND EXCHANGE ACCESS DISPUTES; PROVIDING AN EXPEDITED COMPLAINT PROCESS AND PROCEDURES; AMENDING SECTION 69-3-832, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 69-3-832, MCA, is amended to read:

**"69-3-832. Interconnection — jurisdiction.** In addition to the authority granted to the commission in 69-3-102 to supervise and regulate public utilities, the commission has authority, for the purposes of implementing 69-3-831, 69-3-833 through 69-3-839, [sections 2 and 3], and this section, over all telecommunications carriers."

**Section 2. Expedited complaint proceeding — commission authority.** (1) The commission may conduct expedited complaint proceedings involving interconnection arrangements that include but are not limited to exchange access services between telecommunications carriers.

(2) The provisions of the Montana Administrative Procedure Act do not apply to petitions for an expedited complaint proceeding under [section 3] and this section.

**Section 3. Expedited complaint proceeding — procedure.** (1) (a) A party that petitions the commission for an expedited complaint proceeding shall file with the commission, at the same time as it submits the petition, the following:

(i) a statement that the petitioner has attempted in good faith to resolve the petitioner's disagreement with the respondent prior to petitioning the commission to initiate an expedited complaint proceeding;

(ii) a description of facts, including relevant documentation, of the issues in dispute and the position of each of the parties with respect to those issues; and

(iii) a statement that the petitioner has informed the respondent of the petitioner's intent to file a petition for expedited complaint proceeding at least 10 days prior to filing the petition with the commission.

(b) The petitioner shall provide a copy of the petition and any associated documentation to the other party or parties not later than the day on which the commission receives the petition.

(c) The commission shall limit its consideration during an expedited complaint proceeding to those issues set forth by the parties in the petition and the response to the petition.

(2) A nonpetitioning party may respond to the other party's petition and provide any additional information within 25 days after the commission receives the petition.

(3) (a) The commission may appoint a hearings examiner, who shall file with the commission a proposed decision within the time set by order of the commission.

(b) (i) On the filing by a party, in good faith, of a timely and sufficient affidavit of personal bias, lack of independence, disqualification by law, or other disqualification of a hearings examiner or on the hearings examiner's own motion, the commission shall include the affidavit or motion as a part of the record in the case.

(ii) The affidavit for disqualification must state the facts and the reasons for the belief that the hearings examiner should be disqualified and must be filed not more than 10 days after the date of the appointment of the hearings examiner.

(iii) The commission may disqualify the hearings examiner and appoint another hearings examiner.

(4) Participation in the expedited complaint proceeding must be limited to the petitioning party, named respondents, and the Montana consumer counsel.

(5) Unless otherwise agreed to by the parties, the commission or the hearings examiner shall, within 10 days of the filing of the petition, conduct a conference with the parties for the purpose of establishing a schedule for the orderly and timely disposition of the petition. The schedule must include discovery deadlines and a hearing date.

(6) (a) The hearing must be conducted pursuant to the Montana Rules of Evidence and the parties:

(i) are entitled to be heard;

(ii) may present evidence material to the issues; and

(iii) may cross-examine witnesses appearing at the hearing.

(b) Parties must be allowed to conduct discovery pursuant to the schedule determined by the hearings examiner or the commission, and the discovery must be conducted pursuant to the Montana Rules of Civil Procedure.

(7) The commission or the hearings examiner may issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence relevant to the issues being heard and may administer oaths. Subpoenas must be served and enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action in district court. The commission or the hearings examiner shall regulate the course of the hearing



and the need for filing briefs and may direct the parties to appear and confer to consider simplification of the issues.

(8) The commission shall issue a final order on the petition not later than 120 days from the date that the petition for expedited complaint proceeding was filed with the commission.

(9) If the hearings examiner becomes unavailable to the commission, the commission is not precluded from issuing a final decision based on the record if the demeanor of the witnesses is considered immaterial by all parties.

(10) Unless required for the disposition of ex parte matters authorized by law, the person or persons who are charged with the duty of rendering a decision or of making findings of fact and conclusions of law in an expedited complaint proceeding, after issuance of notice of hearing, may not communicate with any party or party's representative in connection with any issue of fact or law in the case unless there is notice and opportunity for all parties to participate.

(11) As part of its final order, the commission may order relief that is justified under the circumstances. The commission may order the payment of monetary damages, by one party or parties to another party or parties, not to exceed \$10,000.

**Section 4. Codification instruction.** [Sections 2 and 3] are intended to be codified as an integral part of Title 69, chapter 3, part 8, and the provisions of Title 69, chapter 3, part 8, apply to [sections 2 and 3].

**Section 5. Effective date.** [This act] is effective on passage and approval.

Approved April 14, 2003

## CHAPTER NO. 311

[HB 591]

AN ACT PROVIDING FOR TERM PERMIT FEES FOR CERTAIN OVERWEIGHT VEHICLE LOADS; AND AMENDING SECTION 61-10-125, MCA.

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

**Section 1.** Section 61-10-125, MCA, is amended to read:

**"61-10-125. Other fees.** (1) There is charged for a single trip permit for a load that is over the gross allowable load provided for by the formula in 61-10-107(1) but that does not exceed axle limits set forth in 61-10-107(1):

- (a) \$10 for distances to and including 100 miles;
- (b) \$30 for distances from 101 to 199 miles; and
- (c) \$50 for distances over 200 miles traveled.

(2) (a) There is charged a fee of:

(i) \$200 for a term permit for a load that is in excess of the limits set forth in 61-10-107(1) but that does not exceed a total of 5,000 pounds in excess axle weight;

(ii) \$500 for a term permit for a load that is in excess of the limits set forth in 61-10-107(1) but that does not exceed a total of 10,000 pounds in excess axle weight, with no single axle exceeding 5,000 pounds in excess axle weight;

(iii) \$750 for a term permit for a load that is in excess of the limits set forth in 61-10-107(1) but that does not exceed a total of 15,000 pounds in excess axle weight, with no single axle exceeding 5,000 pounds in excess axle weight;

(iv) \$1,000 for a term permit for a load that is in excess of the limits set forth in 61-10-107(1) but that does not exceed a total of 20,000 pounds in excess axle weight, with no single axle exceeding 5,000 pounds in excess axle weight and no tandem axle exceeding 15,000 pounds in excess axle weight;

(v) \$1,500 for a term permit for a load that is in excess of the limits set forth in 61-10-107(1) but that does not exceed a total of 25,000 pounds in excess axle weight, with no axle or axle group exceeding the maximum weight allowed by a weight analysis conducted by the department of transportation;

(vi) \$2,000 for a term permit for a load that is in excess of the limits set forth in 61-10-107(1) but that does not exceed a total of 30,000 pounds in excess axle weight, with no axle or axle group exceeding the maximum weight allowed by a weight analysis conducted by the department of transportation;

(vii) \$4,000 for a term permit for a load that is in excess of the limits set forth in 61-10-107(1) but that does not exceed a total of 40,000 pounds in excess axle weight, with no axle or axle group exceeding the maximum weight allowed by a weight analysis conducted by the department of transportation.

(b) The fees provided in subsection (2)(a) are annual fees but may be prorated on a quarterly basis and may be paid quarterly, semiannually, or annually. However, if the fee is paid other than annually, there is an additional fee of \$10 each time a fee is paid.

(c) A permit issued under this subsection (2) is valid for a period of no less than 1 calendar quarter and no more than 1 calendar year.

(d) The department of transportation or its agent may not issue a term permit for loads that exceed 10,000 pounds in excess axle weight unless the person applying for the term permit has obtained approval from the department of transportation, through a weight analysis, for the configuration of the vehicle.

(3) There is charged for a permit to move a load that exceeds the single axle, tandem axle, or axle group limits set forth in 61-10-107(1) the following fee based upon the sum of excess in axle or axle group weights:

Total Excess Axle Weight (pounds)	Calculated Cost of 25 Miles of Travel (dollars)
5,000 .....	3.50
10,000 .....	7.00
15,000 .....	10.50
20,000 .....	14.00
25,000 .....	17.50
30,000 .....	21.00
35,000 .....	24.50
40,000 .....	28.00
45,000 .....	31.50
50,000 .....	35.00
55,000 .....	38.50

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60,000	.....	42.00
65,000	.....	45.50
70,000	.....	49.00
75,000	.....	52.50
80,000	.....	56.00
85,000	.....	59.50
90,000	.....	63.00
95,000	.....	66.50
100,000	.....	70.00
over 100,000	.....	70.00 + 3.50 per 5,000 lbs. or part of 5,000 lbs. in excess of 100,000 lbs.

(4) For purposes of subsection (3):

(a) mileage must be rounded off in units of 25 miles and mileage in excess of a 25-mile increment must be assessed at the next higher 25-mile increment; and

(b) weight must be rounded off in 5,000-pound increments and weight in excess of a 5,000-pound increment must be assessed at the next higher 5,000-pound increment.

(5) A vehicle must be licensed to the maximum allowable weight authorized under 61-10-107 before an overweight permit may be issued.”

Approved April 14, 2003

## CHAPTER NO. 312

[HB 637]

AN ACT PROHIBITING UNSOLICITED ADVERTISEMENTS THROUGH FACSIMILE TRANSMISSION; AND PROVIDING THAT A VIOLATION OF THIS PROHIBITION IS A VIOLATION OF THE MONTANA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION ACT OF 1973.

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

**Section 1. Definitions — unsolicited advertisement through facsimile transmission prohibited — violation.** (1) As used in this section, the following definitions apply:

(a) “Telephone facsimile machine” means equipment that has the capacity to:

(i) transcribe text or images, or both, from paper into an electronic signal and to transmit that signal over a regular telephone line onto paper; or

(ii) transcribe text or images, or both, from an electronic signal received over a regular telephone line onto paper.

(b) “Unsolicited advertisement” means any material advertising the commercial availability or quality of any property, goods, or service that is transmitted to a person without that person’s prior express invitation or permission.

(2) (a) Except as provided in subsection (2)(b), a person may not use a telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine.

(b) The prohibition contained in subsection (2)(a) does not pertain to a facsimile transmission containing public safety information that is sent by a law enforcement or public safety entity.

(3) A violation of this section is a violation of Title 30, chapter 14, part 1.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 30, chapter 14, and the provisions of Title 30, chapter 14, apply to [section 1].

Approved April 14, 2003

## CHAPTER NO. 313

[SB 180]

AN ACT MAKING PERMANENT THE PROVISION THAT ALLOWS AN INDIVIDUAL WHO LEAVES WORK OR IS DISCHARGED BECAUSE OF CIRCUMSTANCES RESULTING FROM DOMESTIC VIOLENCE TO RECEIVE UNEMPLOYMENT BENEFITS; REPEALING SECTION 4, CHAPTER 520, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Repealer.** Section 4, Chapter 520, Laws of 2001, is repealed.

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

Approved April 14, 2003

## CHAPTER NO. 314

[SB 283]

AN ACT REVISING LAWS RELATING TO VENUE IN FAMILY LAW CASES; REQUIRING MONTANA RESIDENCE FOR 90 DAYS PRECEDING THE FILING OF AN ACTION FOR DISSOLUTION OF MARRIAGE; ALLOWING MEDIATION AGREEMENTS TO BE ADMISSIBLE AS EVIDENCE IF AFFIRMED BY THE PARTIES; AND AMENDING SECTIONS 25-2-118, 40-4-104, AND 40-4-305, MCA.

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

**Section 1.** Section 25-2-118, MCA, is amended to read:

**“25-2-118. Residence of defendant.** (1) Except as provided in subsection (3), the proper place of trial for all civil actions is the county in which the defendants or any of them reside at the commencement of the action.

(2) If none of the defendants reside in the state, the proper place of trial for a contract action is as provided in 25-2-121(1)(b) or (2) and the proper place of trial for a tort action is as provided in 25-2-122(2) or (3).

(3) The proper place ~~of trial for~~ *of trial* for an action brought pursuant to Title 40, chapter 4, is the county in which the petitioner *or the respondent* has resided during the 90 days preceding the ~~commencement~~ *filing* of the action.”

**Section 2.** Section 40-4-104, MCA, is amended to read:

**“40-4-104. Dissolution of marriage — legal separation.** (1) The district court shall enter a decree of dissolution of marriage if:

(a) the court finds that one of the parties, at the time the action was commenced, was domiciled in this state, *as provided in 25-2-118*, or was stationed in this state while a member of the armed services and that the domicile or military presence has been maintained for 90 days preceding the ~~making of the findings~~ *filing of the action*;

(b) the court finds that the marriage is irretrievably broken, which findings must be supported by evidence:

(i) that the parties have lived separate and apart for a period of more than 180 days preceding the commencement of this proceeding; or

(ii) that there is serious marital discord that adversely affects the attitude of one or both of the parties towards the marriage;

(c) the court finds that the conciliation provisions of the Montana Conciliation Law and of 40-4-107 either do not apply or have been met; and

(d) to the extent it has jurisdiction to do so, the court has considered, approved, or made provision for parenting, the support of any child entitled to support, the maintenance of either spouse, and the disposition of property.

(2) If a party requests a decree of legal separation rather than a decree of dissolution of marriage, the court shall grant the decree in that form unless the other party objects.”

**Section 3.** Section 40-4-305, MCA, is amended to read:

**“40-4-305. Mediation agreement.** An agreement reached by the parties as a result of mediation must be discussed by the parties with their attorneys, if any, ~~and the approved agreement may be submitted to the court. An agreement may not be submitted to the court if any party objects. The court may adopt the agreement before the agreement is finalized. An agreement reached in mediation is not admissible as evidence in any action unless the agreement has been affirmed by the parties in a signed, written agreement. The signed, written agreement is governed by 40-4-201.~~

Approved April 14, 2003

## CHAPTER NO. 315

[SB 302]

AN ACT CHANGING THE WAY UNDIVIDED OWNERSHIP INTERESTS IN PROPERTY ARE ASSESSED FOR PROPERTY TAX PURPOSES; PROVIDING THAT THE OWNERS OF UNDIVIDED INTERESTS MAY BE ASSESSED SEPARATELY UPON REQUEST; PROVIDING THAT PAYMENT OF THE TOTAL PROPERTY TAX DUE BY A SINGLE OWNER MAY BE PAYMENT ON BEHALF OF ALL OF THE OWNERS OR THAT A PAYING CO-OWNER MAY, AFTER 3 YEARS OF PAYMENTS AND NOTICES TO THE NONPAYING CO-OWNER, TAKE A PROPERTY TAX LIEN ON THE

NONPAYING CO-OWNER'S INTEREST; PROVIDING THAT NONPAYMENT BY A SEPARATELY ASSESSED CO-OWNER SUBJECTS ONLY THE NONPAYING CO-OWNER'S INTEREST TO A TAX SALE; AND AMENDING SECTIONS 15-7-138 AND 15-16-102, MCA.

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

**Section 1. 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 a tax 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 of a tax lien on the ownership interest of the nonpaying co-owner and the county treasurer shall prepare a tax sale certificate with the paying co-owner as the purchaser. The certificate shall 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). The treasurer shall comply with the provisions of 15-17-212(2) regarding the 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 2.** Section 15-7-138, MCA, is amended to read:

**“15-7-138. Notice of classification and appraisal to single address for owners of undivided interest.** (1) (a) (i) Subject to subsection (2), in the case of multiple, undivided interests in a parcel of land, the department shall send the notice of classification and appraisal required by 15-7-102 to a single owner of the land, as provided in this section.

(ii) *For multiple undivided interests that are mining claims, upon request of all the owners, the department shall send the notice of classification and appraisal required by 15-7-102 and separate assessments to each owner of an undivided interest.*

(iii) *Requests for separate assessment and receipt of separate notice under subsection (1)(a)(ii) are limited to mining claims as the multiple undivided*

*interests existed on or prior to April 30, 2001. Additional division of interests after April 30, 2001, may not result in additional separate assessments.*

(b) Except as provided in subsection (1)(c), the owners of the land shall provide to the department the name and address of the owner to whom the notice is to be sent and shall notify the department of a change in name or address. If an address is not provided, then the department shall send the notice to the address to which previous notices were sent.

(c) In the case of multiple, undivided interests in a parcel of land created after April 30, 2001, the department shall send the notice to the name and address shown on the recorded document creating the multiple, undivided interests in the land. If more than one name and address is shown on the document, the department shall send the notice to the first name and address shown on the document.

(2) A copy of the notice must be sent to other persons upon request of an owner of the land. If a parcel of land is located within the boundaries of a federally recognized Indian reservation, each individual fee patent, even when it is an undivided interest, will be treated as a separate assessment and receive a separate notice of classification and appraisal.”

**Section 3.** 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 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 low-income property tax assistance provisions of 15-6-134(1)(c) and 15-6-191 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 taxable tax years, ~~provided that~~ if taxes for both halves of 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.”

**Section 4. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 15, chapter 17, and the provisions of Title 15, chapter 17, apply to [section 1].

Approved April 14, 2003

## CHAPTER NO. 316

[SB 329]

AN ACT PROVIDING FOR JUVENILE DETENTION OR JUVENILE CORRECTIONS OFFICER AND ADMINISTRATOR STANDARDS, CERTIFICATION, AND TRAINING; PROVIDING THAT TRAINING BE UNDER THE AUSPICES OF THE BOARD OF CRIME CONTROL AND THE MONTANA LAW ENFORCEMENT ACADEMY; EXTENDING THE TIME PERIOD FOR RECEIVING TRAINING FROM 6 MONTHS TO 1 YEAR FOR PROBATION AND PAROLE OFFICERS, CORRECTIONS OFFICERS, JUVENILE DETENTION AND JUVENILE CORRECTIONS OFFICERS, AND COMMERCIAL VEHICLE INSPECTORS; AMENDING SECTIONS 44-4-301 AND 44-4-302, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1. Juvenile detention or juvenile corrections officer training.** A juvenile detention or juvenile corrections officer shall, in the first year of employment, complete a basic training course as required in 44-4-301. The training must be done under the auspices of the Montana law enforcement academy but does not have to occur at the academy.

**Section 2.** Section 44-4-301, MCA, is amended to read:

**“44-4-301. Functions.** (1) As designated by the governor as the state planning agency under the Omnibus Crime Control and Safe Streets Act of 1968, as amended, the board of crime control shall perform the functions assigned to it under that act. The board shall also provide to criminal justice agencies technical assistance and supportive services that are approved by the board or assigned by the governor or legislature.

(2) The board may:

(a) establish minimum qualifying standards for employment of peace officers, as defined in 7-32-303, detention officers, detention center administrators, *juvenile detention center administrators, juvenile detention or*



*juvenile corrections officers*, public safety communications officers, probation and parole officers, corrections officers, and commercial vehicle inspectors; and

(b) develop procedures for revoking or suspending the certification of peace officers, as defined in 7-32-303, detention officers, detention center administrators, *juvenile detention center administrators*, *juvenile detention or juvenile corrections officers*, public safety communications officers, probation and parole officers, corrections officers, and commercial vehicle inspectors.

(3) The board may require basic training for officers, establish minimum standards for equipment and procedures and for advanced inservice training for officers, establish minimum standards for the certification of public safety communications officers, establish minimum standards for the certification of motor carrier services division officers appointed under 61-12-201, and establish minimum standards for law enforcement, ~~and~~ detention officer, *and juvenile detention or juvenile corrections officer* training schools administered by the state or any of its political subdivisions or agencies, to ensure the public health, welfare, and safety.

(4) The board may waive the minimum qualification standard provided in subsection (2) for good cause shown.

(5) The board shall establish minimum standards for training of probation and parole officers, pursuant to 46-23-1003.

(6) The board shall establish minimum standards for training corrections officers and commercial vehicle inspectors.

(7) It is the duty of the appointing authority to cause each probation and parole officer, corrections officer, *juvenile detention or juvenile corrections officer*, and commercial vehicle inspector appointed under its authority whose term of employment commenced after September 30, 1999, to attend and successfully complete within ~~6 months~~ 1 year of employment, an appropriate basic course certified by the board. The appointing authority may terminate a probation and parole officer's, corrections officer's, *juvenile detention or juvenile corrections officer's*, or commercial vehicle inspector's employment for failure to:

- (a) meet the minimum standards established by the board; or
- (b) satisfactorily complete the appropriate basic course."

**Section 3.** Section 44-4-302, MCA, is amended to read:

**"44-4-302. (Temporary) Definitions.** As used in this part, the following definitions apply:

(1) "Commercial vehicle inspector" means a person authorized by the department of justice to conduct a motor carrier safety inspection pursuant to 44-1-1005.

(2) "Corrections officer" means a person who has full-time or part-time authority and responsibility for maintaining custody of inmates and who performs tasks related to the operation of a prison or juvenile correctional facility.

(3) "Detention center" means a facility established and maintained by an appropriate entity for the purpose of confining arrested persons or persons sentenced to a detention center.

(4) "Detention center administrator" means the sheriff, chief of police, administrator, superintendent, director, or other individual serving as the chief executive officer of a detention center or temporary detention center.

(5) "Detention officer" means a person or a peace officer who has full-time or part-time authority and responsibility for maintaining custody of inmates and who performs tasks related to the operation of a detention center or temporary detention center.

(6) "Juvenile detention center" means a detention facility as defined in 41-5-103.

(7) "Juvenile detention officer" means a person who has full-time or part-time authority and responsibility for maintaining custody of juveniles under the jurisdiction of the youth court and who performs tasks related to the operation of a juvenile detention center.

(8) "Public safety communications officer" means a person who receives requests for emergency services, as defined in 10-4-101, dispatches the appropriate emergency service units, and is certified under 7-31-203.

(9) "Temporary detention center" means a facility for the temporary detention of an arrested person for up to 72 hours, excluding holidays, Saturdays, and Sundays. The period of time a person is held in temporary detention may not exceed 96 hours. (Terminates June 30, 2003—sec. 3, Ch. 160, L. 2001.)

**44-4-302. (Effective July 1, 2003) Definitions.** As used in this part, the following definitions apply:

(1) "Commercial vehicle inspector" means a person authorized by the department of justice to conduct a motor carrier safety inspection pursuant to 44-1-1005.

(2) "Corrections officer" means a person who has full-time or part-time authority and responsibility for maintaining custody of inmates and who performs tasks related to the operation of a prison or juvenile correctional facility.

(3) "Detention center" means a facility established and maintained by an appropriate entity for the purpose of confining arrested persons or persons sentenced to a detention center.

(4) "Detention center administrator" means the sheriff, chief of police, administrator, superintendent, director, or other individual serving as the chief executive officer of a detention center or temporary detention center.

(5) "Detention officer" means a person or a peace officer who has full-time or part-time authority and responsibility for maintaining custody of inmates and who performs tasks related to the operation of a detention center or temporary detention center.

(6) "*Juvenile detention center*" means a detention facility as defined in 41-5-103.

(7) "*Juvenile detention or juvenile corrections officer*" means a person who has full-time or part-time authority and responsibility for maintaining custody of juveniles under the jurisdiction of the youth court or the department of corrections and who performs tasks related to the operation of a juvenile detention center or a juvenile correctional facility.

~~(6)~~(8) "Public safety communications officer" means a person who receives requests for emergency services, as defined in 10-4-101, dispatches the appropriate emergency service units, and is certified under 7-31-203.

(7)(9) "Temporary detention center" means a facility for the temporary detention of an arrested person for up to 72 hours, excluding holidays, Saturdays, and Sundays. The period of time that a person is held in temporary detention may not exceed 96 hours."

**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].

**Section 5. Effective date.** [This act] is effective July 1, 2003.

Approved April 14, 2003

## CHAPTER NO. 317

[SB 331]

AN ACT GENERALLY REVISING THE LAWS APPLYING TO THE PRACTICE OF NURSING; ELIMINATING THE REQUIREMENT THAT THE PRACTICE OF NURSING APPLIES ONLY TO THOSE PRACTICING FOR COMPENSATION; AMENDING SECTIONS 37-8-102, 37-8-431, AND 37-8-443, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 37-8-102, MCA, is amended to read:

**"37-8-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Advanced practice registered nurse" means a registered professional nurse who has completed educational requirements related to the nurse's specific practice role, in addition to basic nursing education, as specified by the board pursuant to 37-8-202(5)(a).

(2) "Board" means the board of nursing provided for in 2-15-1734.

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

(4) "Nursing education program" means any board-approved school that prepares graduates for initial licensure under this chapter. Nursing education programs for:

(a) professional nursing may be a department, school, division, or other administrative unit in a junior college, college, or university;

(b) practical nursing may be a department, school, division, or other administrative unit in a vocational-technical institution or junior college.

(5) "Practice of nursing" embraces ~~two classes of nursing service and activity, as follows:~~ the practice of practical nursing and the practice of professional nursing.

(6) (a) "Practice of practical nursing" means the performance ~~for compensation~~ of services requiring basic knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing procedures. Practical nursing practice uses standardized procedures in the observation and care of the ill, injured, and infirm, in the maintenance of health, in action to safeguard life and health, and in the administration of medications and treatments prescribed by a physician, advanced practice registered nurse,

dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments. These services are performed under the supervision of a registered nurse or a physician, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments.

(b) These services may include a charge-nurse capacity in a long-term care facility that provides skilled nursing care or intermediate nursing care, as defined in 50-5-101, under the general supervision of a registered nurse.

~~(b)~~(7) "Practice of professional nursing" means the performance ~~for compensation~~ of services requiring substantial specialized knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing theory as a basis for the nursing process. The nursing process is the assessment, nursing analysis, planning, nursing intervention, and evaluation in the promotion and maintenance of health, the prevention, casefinding, and management of illness, injury, or infirmity, and the restoration of optimum function. The term also includes administration, teaching, counseling, supervision, delegation, and evaluation of nursing practice and the administration of medications and treatments prescribed by physicians, advanced practice registered nurses, dentists, osteopaths, or podiatrists authorized by state law to prescribe medications and treatments. Each registered nurse is directly accountable and responsible to the consumer for the quality of nursing care rendered. As used in this subsection ~~(5)(b)~~ (7):

~~(i)~~(a) "nursing analysis" is the identification of those client problems for which nursing care is indicated and may include referral to medical or community resources;

~~(ii)~~(b) "nursing intervention" is the implementation of a plan of nursing care necessary to accomplish defined goals."

**Section 2.** Section 37-8-431, MCA, is amended to read:

**"37-8-431. Renewal of license.** (1) The license of a person licensed under this chapter must be renewed on the date set by department rule. At least 30 days prior to the renewal date, the department shall mail an application form for renewal of a license to each person to whom a license was issued or renewed. The applicant shall carefully complete and sign the application form and return it to the department with a renewal fee prescribed by the board on or before the renewal date.

(2) The board may increase or decrease the license fee ~~so as in order~~ to maintain in the state special revenue fund at all times an adequate amount to be used for the purpose of administering, policing, and enforcing the provisions of Title 37, chapter 1, and this chapter. On receipt of the application and fee, the department shall verify the accuracy of the application against its record and from other sources the board considers reliable and issue to the applicant a certificate of renewal. The certificate of renewal renders the holder a legal practitioner of nursing for the period stated in the certificate of renewal.

(3) A licensee who allows the license to lapse by failing to renew the license may be reinstated by the board on satisfactory explanation for the failure to renew the license and on payment of the current renewal fee prescribed by the board.

~~(4) A person practicing nursing during the time following the date the license has expired is an illegal practitioner and is subject to the penalties provided for violations of this chapter.~~

~~(5)~~(4) The board may establish a reasonable late fee for licensees who fail to renew their license by the renewal date.”

**Section 3.** Section 37-8-443, MCA, is amended to read:

**“37-8-443. Violation of chapter — penalties.** (1) It is a misdemeanor for a person, ~~(including a corporation, association, or individual),~~ to:

(a) sell or fraudulently obtain or furnish any nursing diploma, license, or record or aid ~~or abet therein in the sale of or in fraudulently obtaining or furnishing a nursing diploma, license, or record;~~

(b) practice nursing, as defined by this chapter, under cover of any diploma, license, or record illegally or fraudulently obtained or signed or issued unlawfully or under fraudulent representation;

~~(c) practice professional nursing unless duly licensed to do so;~~

~~(d) practice practical nursing unless duly licensed to do so;~~

~~(e)~~(c) use in connection with the person’s name any designation tending to imply that the person is a registered professional nurse or a licensed practical nurse unless ~~duly~~ licensed to ~~so~~ practice;

~~(f)~~(d) practice nursing during the time the person’s license is suspended, revoked, or on inactive status;

~~(g)~~(e) conduct a school of nursing or a course unless the school or course has been approved by the board;

~~(h)~~(f) otherwise violate any provision of this chapter.

(2) ~~Such~~ A misdemeanor, as provided in subsection (1) is punishable by a fine of not less than \$100 for the first offense. Each subsequent offense is punishable by a fine of \$300, by imprisonment of not more than 6 months in the county jail, or by both ~~such fine and imprisonment.~~

(3) ~~The several district~~ District courts within their respective county jurisdictions may hear, try, and determine ~~such~~ a misdemeanor and impose ~~in full~~ the *prescribed* punishment and fines ~~prescribed~~. It is necessary to prove, in any prosecution for misdemeanor under this section, only a single act prohibited by law or a single holding out or an attempt. It is not necessary to prove a general course of conduct in order to constitute a violation.”

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved April 14, 2003

## CHAPTER NO. 318

[SB 409]

AN ACT REVISING LAWS RELATED TO STATE LANDS; AUTHORIZING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO CONDUCT CERTAIN INVENTORIES AND ASSESSMENTS; AUTHORIZING THE DEPARTMENT TO CONDUCT LEASE PLANNING; ELIMINATING DUPLICATIVE ENVIRONMENTAL REVIEWS; AMENDING SECTIONS 77-1-121 AND 77-3-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, in August 1996, President Clinton announced an agreement between the federal government and Crown Butte Mines, Incorporated, that

resulted in Crown Butte abandoning further development efforts of a gold mine near Yellowstone National Park in exchange for unspecified federal assets; and

WHEREAS, in October 1997, Congress passed legislation providing \$65 million to purchase the Crown Butte holdings and authorizing the transfer of \$10 million of federal mineral properties or the federal mineral rights to the State of Montana as compensation for the economic opportunity lost to the people of Montana as a result of the Crown Butte agreement; and

WHEREAS, the State of Montana notified Secretary of the Interior Babbitt on February 24, 1999, of the State of Montana's selection of certain mineral tracts; and

WHEREAS, the federal government on April 10, 2002, transferred to the State of Montana the mineral title to certain mineral tracts containing 7,623 acres of federal minerals and 533 million tons of federal coal; and

WHEREAS, the property interests acquired from the federal government in the Crown Butte land exchange are a unique asset of the State of Montana, in that those assets represent a concentrated ownership of state mineral interests, rather than isolated properties; and

WHEREAS, the concentrated state mineral ownership dictates that the state take a proactive approach to the leasing and development of the property interests acquired from the federal government in the Crown Butte land exchange; and

WHEREAS, development of the property interests acquired from the federal government in the Crown Butte land exchange presents a tremendous opportunity to create hundreds of new high quality jobs, generate significant long-term sources of revenue for Montana schools, create additional electrical generation capacity to help meet the growing demand for electricity, and promote associated economic benefits and opportunities; and

WHEREAS, given the proximity of the property interests acquired from the federal government in the Crown Butte land exchange to the Northern Cheyenne Indian Reservation, the State of Montana should continue to work with the Northern Cheyenne in facilitating the development of the state coal interests acquired from the federal government in the Crown Butte land exchange; and

WHEREAS, the State of Montana recognizes the opportunities to export coal to coal-fueled generating plants in order to address Montana's current flat coal export market and the projected decline in coal severance tax revenue; and

WHEREAS, the State of Montana recognizes the need to develop new sources of electric power for Montana's consumers, industry, state institutions, rural cooperatives, and export to sustain economic stability and growth; and

WHEREAS, the State of Montana and the Northern Cheyenne have worked together and negotiated the Otter Creek Settlement Agreement, and the state recognizes the importance of involving the Northern Cheyenne in cultural resource inventories and assessments; and

WHEREAS, the State of Montana recognizes that developing coal-based electrical generation using the property interests in coal resources acquired from the federal government in the Crown Butte land exchange to serve the long-term power needs of both Montana and the western United States and recognizes that the development of coal-based electrical generation and

necessary transmission infrastructure provide the opportunity for other development consistent with Montana's economic development policy.

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

**Section 1. Inventories and assessments.** (1) The department may, in consultation with appropriate state agencies and the Northern Cheyenne tribe, conduct resource inventories and assessments of all or parts of the property interests acquired from the federal government in the Crown Butte land exchange to assist in the leasing, promotion, and development of those property interests. Those inventories and assessments include but are not limited to:

- (a) cultural resource inventories and assessments;
- (b) coal resource inventories and assessments;
- (c) market analysis of the mineral resources; or
- (d) any other inventories and assessments required by law or that the department determines are necessary.

(2) The department may place all or parts of the property interests acquired from the federal government in the Crown Butte land exchange up for lease in accordance with the procedures provided for in Title 77.

(3) Nothing in this section prevents the department from receiving applications to place the tracts for lease prior to the completion of inventories and assessments, and the department may lease the property interests acquired from the federal government in the Crown Butte land exchange in accordance with the applicable provisions of Title 77.

(4) Nothing in this section is intended to alter, diminish, or impair the Otter Creek settlement agreement between the state of Montana and the Northern Cheyenne tribe, and nothing in this section prevents the state from cooperating with the Northern Cheyenne tribe to enforce air and water quality standards through government-to-government reciprocity agreements.

**Section 2. Planning of lease actions.** (1) The department shall manage the property interests acquired from the federal government in the Crown Butte land exchange consistent with 77-3-102 and consult with the private surface owners and the private mineral owners that control the coal property interests that are located in a checkerboard arrangement with the mineral interests acquired from the federal government in the Crown Butte land exchange in the planning of leasing actions.

(2) Consistent with Title 77, the department's leasing actions must:

- (a) attain the fair market value and optimize the monetary return to the public school fund; and
- (b) facilitate and encourage timely development of the property interests acquired from the federal government in the Crown Butte land exchange.

**Section 3.** Section 77-1-121, MCA, is amended to read:

**"77-1-121. Environmental review compliance — exemptions.** (1) *The* Except as provided in subsection (2), the department and board are required to comply with the provisions of Title 75, chapter 1, parts 1 and 2, when implementing provisions within Title 77 only if the department is actively proposing to issue a sale, exchange, right-of-way, easement, placement of improvement, lease, license, or permit, or is acting in response to an application for an authorization for such a proposal.

(2) *The department and board are exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when issuing any lease or license that expressly states that the lease or license is subject to further permitting under any of the provisions of Title 75 or 82.*

~~(2)~~(3) Except for rulemaking and as provided in subsection (1), the department and board are otherwise exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when implementing provisions within Title 77, including but not limited to the issuance of lease renewals. The department and board do not have an obligation to comply with the provisions of Title 75, chapter 1, parts 1 and 2, when implementing provisions within Title 77 if the department or board chooses not to take any action, even though either may have the authority to take an action.

~~(3)~~(4) The department and board are exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when taking actions, including preparing plans or proposals, in relation to and in compliance with the following local government actions:

- (a) development or adoption of a growth policy or a neighborhood plan pursuant to Title 76, chapter 1;
- (b) development or adoption of zoning regulations;
- (c) review of a proposed subdivision pursuant to Title 76, chapter 3;
- (d) actions related to annexation;
- (e) development or adoption of plans or reports on extension of services; and
- (f) other actions that are related to local planning.”

**Section 4.** Section 77-3-301, MCA, is amended to read:

**“77-3-301. Coal leases authorized.** ~~The~~ *In response to an application or on its own initiative, the board may lease in such a manner as that it considers in the best interests of the state any state lands to which the title is vested in the state and in which the coal or coal rights are not reserved by the United States for exploring for, mining, removing, selling, and disposing of the coal therein, upon the terms and conditions herein stated provided in this section and subject to such the rules as that the board prescribes.”*

**Section 5. Notification to tribal government.** The secretary of state shall send a copy of [this act] to the Northern Cheyenne tribal government.

**Section 6. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 77, chapter 1, and the provisions of Title 77, chapter 1, apply to [sections 1 and 2].

**Section 7. Effective date.** [This act] is effective on passage and approval.

Approved April 14, 2003

## CHAPTER NO. 319

[HB 20]

AN ACT BENEFITING MULE DEER AND ELK BY ALLOWING THE ANNUAL ISSUANCE OF ONE MULE DEER LICENSE AND ONE ELK LICENSE THROUGH A COMPETITIVE AUCTION OR LOTTERY; ALLOWING THE AUCTION OR LOTTERY TO BE CONDUCTED BY A WILDLIFE CONSERVATION ORGANIZATION AND ALLOWING THE



RETENTION OF 10 PERCENT OF SALE PROCEEDS BY THE WILDLIFE CONSERVATION ORGANIZATION TO COVER EXPENSES; AND DEDICATING THE REMAINING AUCTION OR LOTTERY PROCEEDS TO THE BENEFIT OF MULE DEER AND ELK.

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

**Section 1. Auction or lottery of mule deer license.** (1) The commission may issue one male mule deer license each year through a competitive auction or lottery. The commission shall promulgate rules for the use of the license and conduct of the auction or lottery. A wildlife conservation organization that focuses on the conservation of mule deer may be authorized to conduct the license auction or lottery, in which case the authorized organization may retain up to 10% of the proceeds of the sale to cover reasonable auction or lottery expenses.

(2) All proceeds remaining from the auction or lottery, whether conducted by the commission or as otherwise authorized by the commission, must be used by the department for the substantial benefit of mule deer. The proceeds from the auction or lottery must be used in addition to any other funds that the department uses for the management of mule deer.

**Section 2. Auction or lottery of elk license.** (1) The commission may issue one male elk license each year through a competitive auction or lottery. The commission shall promulgate rules for the use of the license and conduct of the auction or lottery. A wildlife conservation organization that focuses on the conservation of elk may be authorized to conduct the license auction or lottery, in which case the authorized organization may retain up to 10% of the proceeds of the sale to cover reasonable auction or lottery expenses.

(2) All proceeds remaining from the auction or lottery, whether conducted by the commission or as otherwise authorized by the commission, must be used by the department for the substantial benefit of elk. The proceeds from the auction or lottery must be used in addition to any other funds that the department uses for the management of elk.

**Section 3. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 87, chapter 2, part 8, and the provisions of Title 87, chapter 2, part 8, apply to [sections 1 and 2].

Approved April 15, 2003

## CHAPTER NO. 320

[HB 87]

AN ACT PROHIBITING THE USE OF A PUNCHCARD VOTING SYSTEM IN AN ELECTION AFTER DECEMBER 31, 2003; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Punchcard voting systems prohibited.** A punchcard voting system may not be used in an election after December 31, 2003.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 13, chapter 17, part 1, and the provisions of Title 13, chapter 17, part 1, apply to [section 1].

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

Approved April 15, 2003

## CHAPTER NO. 321

[HB 123]

AN ACT REDUCING THE MINIMUM AGE FOR PURCHASE OF A TRAPPER'S LICENSE FROM 13 YEARS OF AGE TO 12 YEARS OF AGE; REDUCING THE MAXIMUM AGE FOR PURCHASE OF A YOUTH TRAPPING LICENSE TO LESS THAN 12 YEARS OF AGE AND ELIMINATING THE LICENSE FEE; CLARIFYING THAT THE FISH, WILDLIFE, AND PARKS COMMISSION REGULATES TRAPPING; AMENDING SECTIONS 87-2-601, 87-2-603, AND 87-2-605, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 87-2-601, MCA, is amended to read:

**"87-2-601. Class C—trapper's license.** Except as otherwise provided in this chapter, a resident, as defined in 87-2-102, who is ~~13~~ 12 years of age or older, upon making application and payment of a fee of \$20 to the department, may receive a Class C license ~~which shall authorize~~ that authorizes the holder thereof to trap fur-bearing animals and hunt bobcat, wolverine, and Canada lynx within the state of Montana at such the times and in such the manner as may be lawful so to do under the laws of the state provided by law and the regulations of the department commission and at such the places as that may be designated in said the license."

**Section 2.** Section 87-2-603, MCA, is amended to read:

**"87-2-603. Class C-2—nonresident trapper's license.** (1) ~~Any~~ A person not a resident, as defined in 87-2-102, who is ~~13~~ 12 years of age or older, upon making application ~~to the department~~ and paying payment of a fee of \$250 to the department, is entitled to a nonresident trapper's license that authorizes the holder to trap and snare predatory animals and nongame wildlife within the state. ~~Such~~ The trapping or snaring is permitted only after October 15 of each license year; and in such the manner as may be lawful under the laws of the state provided by law and the rules of the commission; and at such the places as that may be designated in the license.

(2) ~~Any~~ A person not a resident whose state of residence does not sell nonresident trapper's licenses to Montanans may not be issued a Class C-2 license under subsection (1)."

**Section 3.** Section 87-2-605, MCA, is amended to read:

**"87-2-605. Class C-3—youth trapping license.** Except as otherwise provided in this chapter, a resident, as defined in 87-2-102, who is 6 years of age or older and less than ~~13~~ 12 years of age, upon making application and payment of a fee of ~~\$3~~ to the department, may receive a Class C-3 license, ~~which that~~ authorizes the holder to trap fur-bearing animals, the trapping of which has not been restricted by the commission, within the state of Montana at such the times and in such the manner as may be lawful under the laws of the state provided by law and the regulations of the department commission; and at such the places as that may be designated in the license."

**Section 4. Effective date.** [This act] is effective July 1, 2003.

Approved April 15, 2003

## CHAPTER NO. 322

[HB 127]

AN ACT GENERALLY REVISING CONSUMER PROTECTION AND UNFAIR TRADE PRACTICES LAWS; DEFINING "CONSUMER" AND DELETING THE DEFINITION OF "NATIONAL ADVERTISING"; CLARIFYING EXEMPTIONS FROM THE PROVISIONS OF THE MONTANA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION ACT OF 1973; PROVIDING THAT THE DEPARTMENT OF ADMINISTRATION MAY BRING AN ACTION TO RESTRAIN UNFAIR METHODS OF COMPETITION OR UNFAIR OR DECEPTIVE ACTS OR PRACTICES IN LEWIS AND CLARK COUNTY WITHOUT CONSENT OF THE PARTIES; INCREASING THE MINIMUM DAMAGES FOR UNLAWFUL ACTS TO \$500; INCREASING THE MAXIMUM CIVIL FINE FOR UNLAWFUL ACTS TO \$10,000; MANDATING THAT THE DEPARTMENT HOLD A HEARING TO DECIDE IF A COST SURVEY SHOULD BE PERFORMED; DELETING PROVISIONS RELATING TO CERTAIN REBATES; PROVIDING THAT THE DEPARTMENT OF ADMINISTRATION'S OBLIGATION TO ENFORCE CERTAIN PROVISIONS OF THE UNFAIR TRADE PRACTICES LAWS IS PERMISSIVE RATHER THAN MANDATORY; INCREASING THE MAXIMUM PENALTY FOR A VIOLATION OF A DEPARTMENT ORDER UNDER THE UNFAIR TRADE PRACTICES LAWS TO \$10,000; INCREASING THE RECOVERY FOR A PERSON BRINGING AN ACTION UNDER THE UNFAIR TRADE PRACTICES LAWS AND PROVIDING FOR ATTORNEY FEES AND COSTS FOR PREVAILING PARTIES; PROVIDING THAT A VIOLATION OF CERTAIN PROVISIONS OF THE UNFAIR TRADE PRACTICES LAWS MAY BE A FELONY RATHER THAN A MISDEMEANOR; GENERALLY REVISING LAWS REGARDING PERSONAL SOLICITATION SALES; REVISING THE DEFINITION OF "PERSONAL SOLICITATION"; ELIMINATING THE DISCLOSURE OBLIGATION EXEMPTION FOR NONPROFIT ORGANIZATIONS; INCREASING THE BUYER'S RECOVERY UNDER REVOKED PERSONAL SOLICITATION SALES; AMENDING SECTIONS 30-14-102, 30-14-105, 30-14-111, 30-14-131, 30-14-133, 30-14-142, 30-14-211, 30-14-219, 30-14-220, 30-14-222, 30-14-223, 30-14-224, 30-14-501, 30-14-502, 30-14-503, AND 30-14-506, MCA; REPEALING SECTION 30-14-215, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 30-14-102, MCA, is amended to read:

**"30-14-102. Definitions.** As used in this part, the following definitions apply:

(1) "Consumer" means a person who purchases or leases goods, services, real property, or information primarily for personal, family, or household purposes.

~~(1)~~(2) "Department" means the department of administration created in 2-15-1001.

~~(2)~~(3) "Documentary material" means the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart,

photograph, mechanical transcription, or other tangible document or recording, ~~wherever situate.~~

~~(3)~~(4) "Examination" of documentary material includes the inspection, study, or copying of documentary material and the taking of testimony under oath or acknowledgment in respect to any documentary material or copy of documentary material.

~~(4) "National advertising" means any advertising run simultaneously in five or more states and over which a local advertiser has no control.~~

(5) "Person" means natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entity.

(6) "Trade" and "commerce" mean the advertising, offering for sale, sale, or distribution of any services, ~~and~~ any property, tangible or intangible, real, personal, or mixed, ~~and~~ or any other article, commodity, or thing of value, wherever located, and includes any trade or commerce directly or indirectly affecting the people of this state."

**Section 2.** Section 30-14-105, MCA, is amended to read:

**"30-14-105. Exemptions.** ~~Nothing in this~~ *This part shall does not apply to:*

(1) actions or transactions permitted under laws administered by the Montana public service commission *or the state auditor acting under statutory authority of this part or the United States;* or

(2) acts ~~done by the~~ *of a retail merchant's merchant,* publisher, owner, agent, or employee of a newspaper, periodical, or radio or television station or advertising agency in the publication or dissemination of an advertisement; when the *merchant, publisher,* owner, agent, or employee did not have knowledge of the false, misleading, or deceptive character of the advertisement ~~and did not have a direct financial interest in the advertised product or service;~~

~~(3) national advertising."~~

**Section 3.** Section 30-14-111, MCA, is amended to read:

**"30-14-111. Department to restrain unlawful acts.** (1) Whenever the department has reason to believe that ~~any~~ a person is using, has used, or is about to knowingly use any method, act, or practice declared by 30-14-103 to be unlawful and that proceeding would be in the public interest, the department may bring an action in the name of the state against ~~such~~ *the* person to restrain by temporary or permanent injunction or temporary restraining order the use of ~~such~~ *the unlawful* method, act, or practice; upon ~~the giving of~~ appropriate notice to that person.

(2) The notice must state generally the relief sought and be served in accordance with 30-14-115 at least 20 days before the hearing of the action ~~where in which~~ the relief ~~to be~~ sought is a temporary or permanent injunction. The notice for a temporary restraining order is governed by 27-19-315.

(3) ~~The~~ *An action under this section may be brought in the district court in the county in which such a person resides or has his the person's principal place of business or, with consent of the parties, may be brought in the district court of Lewis and Clark County.*

(4) ~~The courts are~~ *A district court is authorized to issue temporary or permanent injunctions or temporary restraining orders to restrain and prevent violations of this part, and such injunctions shall be issued without bond, and an injunction must be issued without bond."*

**Section 4.** Section 30-14-131, MCA, is amended to read:

**“30-14-131. Restoration — court orders.** (1) The court may enter ~~make~~ ~~such additional~~ orders or judgments ~~as may be~~ necessary to restore to ~~any~~ a person any ~~moneys~~ money or property, real or personal, ~~which that~~ may have been acquired by means of any practice in this part declared to be unlawful, including the appointment of a receiver or the revocation of a license or certificate authorizing that person to engage in business in this state, or both.

(2) *The court may enter any other order or judgment required by equity to carry out the provisions of this part.*

**Section 5.** Section 30-14-133, MCA, is amended to read:

**“30-14-133. Damages — notice to public agencies — attorney fees — prior judgment as evidence.** (1) ~~Any person who purchases or leases goods or services primarily for personal, family, or household purposes and thereby~~ A consumer who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a method, act, or practice declared unlawful by 30-14-103 may bring an individual ~~but not~~ *but not* a class action under the rules of civil procedure in the district court of the county in which the seller, ~~or~~ lessor, *or service provider* resides or has ~~his~~ *his* its principal place of business or is doing business to recover actual damages or ~~\$200~~ \$500, whichever is greater. *An individual claim may be brought in justice’s court.* The court ~~may, in its discretion,~~ *may, in its discretion,* award up to three times the actual damages sustained and may provide ~~such~~ *any other* equitable relief ~~as that~~ it considers necessary or proper.

(2) Upon commencement of any action brought under subsection (1) ~~of this section,~~ the clerk of court shall mail a copy of the complaint or initial pleading to the department and the appropriate county attorney and, upon entry of any judgment or decree in the action, shall mail a copy of ~~such~~ *the* judgment or decree to the department and the appropriate county attorney.

(3) In any action brought under this section, the court may award the prevailing party reasonable attorney fees incurred in prosecuting or defending the action. *A person who brings an action on the person’s own behalf without an attorney may receive attorney fees at the judge’s discretion.*

(4) Any permanent injunction, judgment, or order of the court made under 30-14-111 ~~shall be~~ *is* prima facie evidence in an action brought under this section that the respondent used or employed a method, act, or practice declared unlawful by 30-14-103.”

**Section 6.** Section 30-14-142, MCA, is amended to read:

**“30-14-142. Penalties.** (1) ~~A~~ *In addition to any fine that a person might be subject to under subsection (2),* a person who violates the terms of an injunction or temporary restraining order issued under 30-14-111 shall forfeit and pay to the state a civil fine of not more than \$10,000 for each violation. For the purposes of this section, the district court issuing an injunction or temporary restraining order retains jurisdiction and the cause must be continued, and in those cases, the department, acting in the name of the state, may petition for recovery of civil penalties.

(2) In an action brought under 30-14-111, if the court finds that a person is willfully using or has willfully used a method, act, or practice declared unlawful by 30-14-103, the department, upon petition to the court, may recover on behalf of the state a civil fine of not more than ~~\$1,000~~ \$10,000 for each violation. *The*

*fine provided for in this subsection is in addition to any liability that a person might be subject to under subsection (1).*

(3) A person who engages in a fraudulent course of conduct declared unlawful by 30-14-103 shall upon conviction be fined *an amount* not more than \$5,000, imprisoned for not more than 1 year, or both, in the discretion of the court. ~~Nothing in this~~ *This subsection limits does not limit* any other provision of this part.

(4) For purposes of this section, a willful violation occurs when the party committing the violation knew or should have known that the conduct was a violation of 30-14-103.”

**Section 7.** Section 30-14-211, MCA, is amended to read:

**“30-14-211. Establishing cost survey.** (1) The department shall, whenever application has been made by 10 or more persons within a particular trade or business, ~~establish the cost survey provided for in 30-14-210. When petition for a cost survey has been so presented to the department, the department shall,~~ as soon as possible, fix a time for a public hearing upon the question of whether the cost survey should be established and, if so, upon the matter of establishing ~~such~~ *the* cost survey. The hearing ~~shall~~ *must* be held at the office of the department and upon ~~that~~ *notice which that* the department may require by rule. However, notice of the hearing ~~shall~~ *must* be published for at least 2 successive weeks in the daily newspaper or newspapers ~~as designated~~ *by the department may designate* as *the* most commonly circulated in the counties ~~to be~~ affected by the cost survey. The notice ~~shall~~ *must* further state the locality or area in respect to which the cost survey is proposed to be established and the particular trade or business to be affected by it.

(2) At the time fixed in the notice any person may appear and be heard by the department upon all questions to be determined by ~~the department~~ *as provided in this section*. If the department determines that a cost survey should be established, it shall at the same hearing proceed to classify and define the particular trade or business, or parts ~~thereof~~ *of a particular trade or business*, to be affected, determine ~~and delimit~~ the particular area within which the trade or business will be affected, and find and determine the probable cost of doing business or overhead expense, stated in percentage of invoice or replacement cost ~~which that~~ would probably be incurred by the most efficient person in the trade or business within the area.

(3) If the department determines that the probable cost of doing business or overhead expense stated in percentage of invoice or replacement cost ~~which that~~ would probably be incurred by the most efficient person in the trade or business is the same for the entire state, then the department may, upon proper notice given as provided in this section, create one trade area embracing the entire state.

(4) The percentage so determined ~~shall~~ *must* be presumed to be the actual cost of doing business and overhead expense of any person in the trade or business and within the area affected by the cost survey.”

**Section 8.** Section 30-14-219, MCA, is amended to read:

**“30-14-219. Recovery on illegal contracts forbidden.** A contract, express or implied, made by a person in violation of any of the provisions of 30-14-205 through 30-14-214 or 30-14-216 through 30-14-218 is an illegal contract ~~and no~~ *upon which* recovery ~~thereon~~ *thereon* may not be had.”

**Section 9.** Section 30-14-220, MCA, is amended to read:

**"30-14-220. Enforcement by department.** (1) The department ~~shall~~ may prevent a person from violating any of the provisions of this part.

(2) Upon receiving notice that a person is violating or has violated any of the provisions of this part, the department shall immediately direct the person giving the notice either to appear before the director of the department or to make a written reply to show probable cause of a violation. If probable cause is shown, the department ~~shall~~ may

~~(a) make its own investigation;~~

~~(b) within 60 days of the finding of probable cause make a written report of its investigation; and~~

~~(c) mail a copy of its findings to the person initially giving notice of a violation.~~

(3) (a) If the department, after an investigation, has reason to believe that the person has been or is engaging in any course of conduct or doing any act in violation of this part ~~and~~ or if it appears to the department that a proceeding by it would be in the interest of the public, it ~~shall~~ may issue and serve upon the person a complaint stating the charges and containing a notice of a hearing, ~~at a place the location of the hearing, and upon a day the date of the hearing, which may not be less than 5 days after the service of the complaint.~~

(b) A complaint may be amended by the department in its discretion at any time 5 days prior to the issuance of an order based on it.

~~(c) The~~ A person ~~so complained against~~ *who is the subject of a complaint* may appear at the ~~place and time so fixed~~ *hearing* and show cause why an order should not be entered by the department requiring ~~such~~ the person to stop the violation of the law charged in the complaint.

(d) Any person may ~~make application~~ *apply* and upon *showing* good cause ~~shown may~~ be allowed by the department to intervene and appear in the proceeding by counsel or in person.

(e) The testimony in the proceeding ~~shall~~ *must* be reduced to writing and filed with the department.

(f) If upon *the conclusion of* the hearing the department ~~believes~~ *determines* that the act or conduct in question is prohibited by this part, it shall make findings of fact in writing and issue and cause to be served on the person charged an order requiring ~~such~~ the person to stop the ~~acts~~ *act* or conduct.

(g) Until a transcript of the record in the hearing has been filed in a district court, the department may at any time, upon the notice and in the manner it considers proper, modify or set aside, in whole or in part, a report or an order made or issued by it under this section.

(4) A court reviewing an order of the department may issue ~~such~~ *writs as that* are ancillary to its jurisdiction or *that* are necessary in its judgment to prevent injury to the public or to competitors pending the outcome of the suit.

(5) To the extent that the order of the department is affirmed, the court shall ~~thereupon~~ issue its own order ~~commanding obedience to~~ *requiring compliance with* the terms of the order of the department.

(6) Proceedings under this section ~~shall~~ *must* be given precedence over other civil cases pending in the district court and ~~shall~~ *must* be in every way expedited.

(7) A person who violates an order of the department after it has become final and while the order is in effect shall forfeit and pay to the state a penalty of not more than ~~\$1,000~~ \$10,000 for each violation.

(8) The remedies and method of enforcement of this part provided for in this section are concurrent and in addition to the other remedies provided in this part.”

**Section 10.** Section 30-14-222, MCA, is amended to read:

**“30-14-222. Injunctions — damages — production of evidence.** (1) Any person, ~~if who is or will be injured thereby,~~ *the department,* or the attorney general may maintain an action to enjoin ~~a continuance of~~ an act *that is* in violation of 30-14-205 through ~~30-14-214 or 30-14-216 through~~ 30-14-218 and for the recovery of damages. ~~If in such action~~ the court finds that the defendant is violating or has violated any of the provisions of 30-14-205, ~~30-14-214 or 30-14-216 through~~ 30-14-218, it shall enjoin the defendant ~~from a continuance thereof.~~ It is not necessary to allege or prove actual damages to the plaintiff.

(2) (a) In addition to ~~such~~ injunctive relief, the plaintiff is entitled to recover from the defendant *the greater of* three times the amount of actual damages sustained ~~or \$1,000.~~

(b) *In addition to any amount recovered pursuant to subsection (2)(a), a plaintiff who proves a violation of 30-14-209 is entitled to \$500 a day for each day that a violation of 30-14-209 occurred.*

(3) A defendant in an action brought under this section may be required to testify under the Montana Rules of Civil Procedure. In addition, the books and records of ~~any such~~ the defendant may be brought into court and introduced into evidence by reference. ~~No information so~~ Information obtained pursuant to this subsection may *not* be used against the defendant as a basis for ~~a misdemeanor~~ prosecution under 30-14-205 through ~~30-14-214, 30-14-216 through~~ 30-14-218, ~~and~~ or 30-14-224.

(4) *In an action brought by a party other than the state, the prevailing party is entitled to attorney fees and costs.”*

**Section 11.** Section 30-14-223, MCA, is amended to read:

**“30-14-223. Department to institute Department’s institution of suit.** Upon the ~~third~~ violation of any of the provisions of 30-14-205, ~~30-14-214 or 30-14-216 through~~ 30-14-218 by any business, the department ~~shall~~ may institute ~~proper suits or quo warranto proceedings~~ a *proceeding* in a court of competent jurisdiction for the forfeiture of ~~its~~ *the business’s* charter, rights, franchises or privileges, and powers exercised by ~~such~~ *the* business and to permanently enjoin it from transacting business in this state. If in ~~such action~~ *the proceeding* the court finds that the business is violating or has violated any of the provisions of 30-14-205, ~~30-14-214 or 30-14-216 through~~ 30-14-218, ~~it~~ *the court* shall enjoin the business from doing business in this state permanently or for ~~such~~ a *period of time as that* the court orders or *the court* shall annul the charter or revoke the franchise of ~~such~~ *the* business.”

**Section 12.** Section 30-14-224, MCA, is amended to read:

**“30-14-224. Penalties.** (1) ~~Except as otherwise provided in this section, a~~ A person, whether as principal, agent, officer, or director, who *purposely or knowingly* violates any of the provisions of ~~30-14-206 through 30-14-218~~ *30-14-207 through 30-14-214 or 30-14-216 through 30-14-218* is guilty of ~~a misdemeanor~~ *an offense* for each ~~single~~ violation and upon conviction ~~thereof~~



~~shall~~ may be fined *an amount* not less than \$100 or more than \$1,000 ~~\$10,000 or~~ or imprisoned for a term not to exceed ~~6 months~~ 2 years, ~~or both, or both.~~

(2) A violation of 30-14-205 is punishable by imprisonment ~~in the county jail~~ for a period of not less than 24 hours or more than 1 year ~~5 years or by, and the offender may be subject to a fine in an amount not exceeding \$25,000, or both.~~

(3) When there is a violation of 30-14-216, in addition to the penalty specified in subsection (1), the court before which a conviction is had shall, within 10 days after judgment of conviction is given, forward a certified copy of the judgment to the department of agriculture and that department shall revoke any license issued to the *convicted* person ~~so convicted. In such case no~~ A new license may not be granted to the person whose license is revoked or to anyone either directly or indirectly engaged with ~~him that person in such that~~ business for a period of ~~1 year~~ 5 years."

**Section 13.** Section 30-14-501, MCA, is amended to read:

**"30-14-501. Purpose.** The purpose of this part is to afford ~~consumers~~ *persons* subjected to high pressure personal solicitation sales tactics a cooling-off period."

**Section 14.** Section 30-14-502, MCA, is amended to read:

**"30-14-502. Definitions.** As used in this part, the following definitions apply:

(1) "Buyer" means anyone who gives a consideration for the purchase or use of goods or services.

(2) "Personal solicitation" means any attempt by a seller ~~who regularly engages in transactions of the same kind to sell goods or services which are primarily for personal, family, or household purposes,~~ when either the seller or a person acting for ~~him the seller~~ contacts the buyer by telephone or in person other than at the place of the business of the seller, except:

(a) an attempted sale in which the buyer, *prior to the attempted sale*, personally knows the identity of the seller, the name of the business, firm, or organization ~~he that the seller~~ represents, and the identity or kinds of goods or services offered for sale;

(b) an attempted sale in which the buyer has initiated the contact with the seller;

(c) an attempted sale of a newspaper subscription in which the seller is a minor engaged in both the delivery and the sale of the newspaper; ~~or~~

(d) an attempted sale of an insurance policy; *or*

(e) *an attempted sale of more than \$5,000 of goods or services that are not primarily for personal, family, or household purposes.*

(3) "Personal solicitation sale" means the purchase, lease, or rental of any goods or services following a personal solicitation by the seller or a person acting for ~~him the seller; provided if~~ the buyer is required to give consideration in excess of \$25 in cash or credit ~~therefor.~~

(4) "Seller" means a lessor, renter, or anyone offering goods or services for consideration, including *an assignee of a seller.*"

**Section 15.** Section 30-14-503, MCA, is amended to read:

**"30-14-503. Disclosure obligation.** Before any personal solicitation, each seller shall, at the time of initial contact or communication with the potential

buyer, clearly and expressly disclose the individual seller's name, the name of the business, firm, or organization ~~he that the seller~~ represents, and the identity or kinds of goods or services ~~he that the seller~~ wishes to demonstrate or sell, ~~and that he wishes to demonstrate or sell the identified goods or services.~~ When the initial contact is made in person, the seller shall also show the potential buyer an identification card ~~which that~~ clearly states the seller's name and the name of the business or organization ~~he that the seller~~ represents. The disclosures required by this section ~~shall must~~ be made before asking any questions or making any statements except an initial greeting. ~~Nonprofit organizations are exempt from the requirements of this section. Failure to provide the information required by this section may be punished by a civil fine of not more than \$1,000 for each violation.~~

**Section 16.** Section 30-14-506, MCA, is amended to read:

**"30-14-506. Repayment to buyer — retention of goods by buyer — court award, costs, and attorney fees.** (1) Except as provided in this section, within 10 days after a personal solicitation sale has been canceled or an offer to purchase revoked, the seller shall tender to the buyer any payments made by the buyer and any note or other evidence of indebtedness.

(2) If the ~~down payment~~ *downpayment* includes goods traded in, the goods ~~shall must~~ be tendered in substantially as good condition as when received by the seller. If the seller fails to tender the goods as provided by this section, the buyer may elect to recover an amount equal to the trade-in allowance stated in the agreement.

(3) If the seller refuses within the period prescribed by subsection (1) to return the ~~cash down payment~~ *downpayment* or goods tendered as ~~down payment~~ *downpayment*, ~~he the seller shall be~~ is liable to the buyer for the entire ~~down payment~~ *downpayment*, and if the buyer is successful in ~~his a~~ court action ~~therefor for~~ recovery, the court shall also award ~~him the buyer~~ *the buyer* \$100 ~~\$500~~ plus reasonable ~~attorneys' attorney~~ fees and costs.

(4) Until the seller has complied with this section, the buyer may retain possession of goods delivered ~~to him~~ by the seller and ~~shall have~~ has a lien on the goods ~~in his possession~~ or control for any recovery to which ~~he the buyer~~ may be entitled."

**Section 17. Repealer.** Section 30-14-215, MCA, is repealed.

**Section 18. Coordination instruction.** (1) If House Bill No. 571 and [this act] are both passed and approved, then subsection (1) of 30-14-133 in [section 4 of House Bill No. 571] is amended to read:

~~"(1) Any person who purchases or leases goods or services primarily for personal, family, or household purposes and thereby~~ A consumer who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a method, act, or practice declared unlawful by 30-14-103 may bring an individual but not a class action under the rules of civil procedure in the district court of the county in which the seller, ~~or~~ lessor, or service provider resides or has ~~his its~~ principal place of business or is doing business to recover actual damages or ~~\$200~~ \$500, whichever is greater. An individual claim may be brought in justice's court. The court may, in its discretion, award up to three times the actual damages sustained and may provide ~~such any other~~ equitable relief ~~as that~~ it considers necessary or proper."

(2) If House Bill No. 571 and [this act] are both passed and approved, then [section 5] of House Bill No. 571, amending 30-14-142, is void.

(3) If House Bill No. 571 and [this act] are both passed and approved, then [section 8] of House Bill No. 571, amending 30-14-220, is void.

**Section 19. Effective date.** [This act] is effective on passage and approval.

Approved April 15, 2003

## CHAPTER NO. 323

[HB 203]

AN ACT GENERALLY REVISING LAWS GOVERNING BALLOT MEASURES; REVISING THE DEFINITION OF "SIGNATURE GATHERER"; CLARIFYING THAT PETITIONS FOR BALLOT MEASURES ARE TO BE CIRCULATED BY SIGNATURE GATHERERS; PROVIDING REQUIREMENTS FOR INTERNET POSTING OF PETITIONS FOR BALLOT MEASURES; REQUIRING PETITIONS FOR BALLOT MEASURES TO INCLUDE THE INITIALS OF THE PERSON SIGNING THE PETITION AND THE DATE WHEN THE FIRST SIGNATURE WAS GATHERED; CONFORMING REQUIREMENTS FOR SIGNATURES FOR INITIATIVE MEASURES AND INITIATIVES FOR CONSTITUTIONAL AMENDMENTS TO CONSTITUTIONAL REQUIREMENTS FOR GATHERING SIGNATURES IN ONE-HALF OF THE COUNTIES; REVISING REQUIREMENTS FOR SUBMISSION OF PETITION SHEETS FOR BALLOT MEASURES FOR VERIFICATION OF SIGNATURES; REQUIRING CERTIFICATION OF SIGNATURES ON PETITIONS FOR BALLOT MEASURES BY THE SIGNATURE GATHERER; AUTHORIZING THE SECRETARY OF STATE TO REJECT PETITIONS FOR BALLOT MEASURES SUBMITTED FOR TABULATION OF SIGNATURES THAT DO NOT MEET STATUTORY REQUIREMENTS; AMENDING SECTIONS 13-27-111, 13-27-201, 13-27-202, 13-27-204, 13-27-205, 13-27-206, 13-27-207, 13-27-301, 13-27-302, 13-27-303, 13-27-304, AND 13-27-307, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 13-27-111, MCA, is amended to read:

**"13-27-111. Definitions.** As used in 13-27-112, 13-27-113, and this section, unless otherwise indicated by the context, the following definitions apply:

(1) "Commissioner" means the commissioner of political practices provided for in 13-37-101.

(2) "Paid signature gatherer" means a signature gatherer who is compensated in money for the collection of signatures.

(3) "Person" has the meaning provided in 13-1-101, but does not include a candidate and includes a political committee.

(4) "Signature gatherer" means an individual who collects ~~or intends to collect~~ signatures on a petition for the purpose of an initiative, a referendum, or the calling of a constitutional convention."

**Section 2.** Section 13-27-201, MCA, is amended to read:

**"13-27-201. Form of petition generally.** (1) A petition for the initiative, for the referendum, or to call a constitutional convention must be substantially in the form provided by this chapter. Clerical or technical errors that do not

interfere with the ability to judge the sufficiency of signatures on the petition do not render a petition void.

(2) Petition sheets may not exceed 8 1/2 x 14 inches in size. Separate sheets of a petition may be fastened in sections of not more than 25 sheets. Near the top of each sheet containing signature lines must be printed the title of the statute or constitutional amendment proposed or the measure to be referred or a statement that the petition is for the purpose of calling a constitutional convention. If signature lines are printed on both the front and back of a petition sheet, the information required above must appear on both the front and back of the sheet. The complete text of the measure proposed or referred must be attached to or contained within each signature sheet if sheets are circulated separately. The text of the measure must be in the bill form provided in the most recent issue of the bill drafting manual furnished by the legislative services division. If sheets are circulated in sections, the complete text of the measure must be attached to each section.

(3) *An internet posting of petition language must include a statement that the petition language and format may not be modified. An internet posting must include an affidavit in substantially the same form as prescribed by the secretary of state pursuant to 13-27-302.*

**Section 3.** Section 13-27-202, MCA, is amended to read:

**“13-27-202. Recommendations — approval of form required.** (1) Before submission of a sample sheet to the secretary of state pursuant to subsection (3), the following requirements must be fulfilled:

(a) The text of the proposed measure must be submitted to the legislative services division for review.

(b) The legislative services division staff shall review the text for clarity, consistency, and any other factors that the staff considers when drafting proposed legislation.

(c) Within 14 days after submission of the text, the legislative services division staff shall make to the person submitting the text written recommendations for changes in the text or a statement that no changes are recommended.

(d) The person submitting the text shall consider the recommendations and respond in writing to the legislative services division, accepting, rejecting, or modifying each of the recommended changes. If no changes are recommended, no response is required.

(2) The legislative services division shall furnish a copy of the correspondence provided for in subsection (1) to the secretary of state, who shall make a copy of the correspondence available to any person upon request.

(3) Before a petition may be circulated for signatures, a sample sheet containing the text of the proposed measure must be submitted to the secretary of state in the form in which it will be circulated. The sample petition may not be submitted to the secretary of state more than 1 year prior to the final date for filing the signed petition with the county election administrator. The secretary of state shall refer a copy of the petition sheet to the attorney general for approval. The secretary of state and attorney general shall each review the petition for sufficiency as to form and approve or reject the form of the petition, stating the reasons for rejection, if any. The attorney general shall also review the petition as to its legal sufficiency. If the attorney general determines that the petition is legally deficient, the attorney general shall notify the secretary of

state of that fact and provide a copy of the determination to the secretary of state and to the petitioner within the time provided in 13-27-312(8). The petition may not be given final approval by the secretary of state unless the attorney general's determination is overruled pursuant to 13-27-316. As used in this section, "legal sufficiency" means that the petition complies with the statutory prerequisites to submission of the proposed measure to the electors and that the text of the proposed measure complies with constitutional requirements governing submission of ballot measures to the electorate. Review of a petition for legal sufficiency does not include consideration of the merits or application of the measure if adopted by the voters. The secretary of state or the attorney general may not reject the petition solely because the text contains material not submitted to the legislative services division unless the material not submitted to the legislative services division is a substantive change not suggested by the legislative services division.

(4) (a) The secretary of state shall review the comments and statements of the attorney general received pursuant to 13-27-312 and make a final decision as to the approval or rejection of the petition.

(b) The secretary of state shall send written notice to the person who submitted the petition sheet of the approval or rejection of the form of the petition within 28 days after submission of the petition sheet.

(c) If an action is filed challenging the validity of the petition, the secretary of state shall immediately notify the person who submitted the petition sheet.

(5) A petition with technical defects in form may be approved with the condition that those defects will be corrected before the petition is circulated for signatures.

(6) The secretary of state shall upon request provide the person submitting the petition with a sample petition form, including the text of the proposed measure, the statement of purpose, and the statements of implications, all as approved by the secretary of state and the attorney general. The petition may be circulated *by a signature gatherer* in the form of the sample prepared by the secretary of state. The petition may be circulated *by a signature gatherer* upon approval of the form of the petition by the secretary of state and the attorney general pending a final determination of its legal sufficiency."

**Section 4.** Section 13-27-204, MCA, is amended to read:

**"13-27-204. Petition for initiative.** (1) The following is substantially the form for a petition calling for a vote to enact a law by initiative:

PETITION TO PLACE INITIATIVE NO. \_\_\_\_  
ON THE ELECTION BALLOT

(a) If 5% of the voters in each of ~~34 legislative representative districts~~ *one-half of the counties* sign this petition and the total number of voters signing this petition is ....., this measure will appear on the next general election ballot. If a majority of voters vote for this measure at that election, it will become law.

(b) We, the undersigned Montana voters, propose that the secretary of state place the following measure on the .... .., 20..., general election ballot:

(Title of measure written pursuant to 13-27-312)

(Statement of implication written pursuant to 13-27-312)

(c) Voters are urged to read the complete text of the measure, which appears (on the reverse side of, attached to, etc., as applicable) this sheet. A signature on

this petition is only to put the measure on the ballot and does not necessarily mean the signer agrees with the measure.

(d)

#### WARNING

A person who purposefully signs a name other than the person's own to this petition, who signs more than once for the same issue at one election, or who signs when not a legally registered Montana voter is subject to a \$500 fine, 6 months in jail, or both.

(e) Each person is required to sign the person's name and list the person's address or telephone number in substantially the same manner as on the person's voter registration card or the signature will not be counted.

(2) Numbered lines must follow the heading. Each numbered line must contain spaces for the signature, residence address, ~~legislative representative district number~~ *county of residence*, and printed last name *and first and middle initials* of the signer. In place of a residence address, the signer may provide the signer's post-office address or the signer's home telephone number. An address provided on a petition by the signer that differs from the signer's address as shown on the signer's voter registration card may not be used as the only means to disqualify the signature of that petition signer."

**Section 5.** Section 13-27-205, MCA, is amended to read:

**"13-27-205. Petition for the referendum.** (1) The following is substantially the form for a petition calling for approval or rejection of an act of the legislature by the referendum:

PETITION TO PLACE REFERENDUM NO. \_\_\_\_  
ON THE ELECTION BALLOT

(a) If 5% of the voters in each of 34 legislative representative districts sign this petition and the total number of voters signing the petition is ....., Senate (House) Bill Number .... will appear on the next general election ballot. If a majority of voters vote for this measure at that election it will become law.

(b) We, the undersigned Montana voters, propose that the secretary of state place the following Senate (House) Bill Number ....., passed by the legislature on ..... on the next general election ballot:

(Title of referendum written pursuant to 13-27-312)

(Statement of implication written pursuant to 13-27-312)

(c) Voters are urged to read the complete text of the measure, which appears (on the reverse side of, attached to, etc., as applicable) on this sheet. A signature on this petition is only to put the measure on the ballot and does not necessarily mean the signer agrees with the measure.

(d)

#### WARNING

A person who purposefully signs a name other than the person's own to this petition or who signs more than once for the same issue at one election or signs when not a legally registered Montana voter is subject to a \$500 fine, 6 months in jail, or both.

(e) Each person must sign the person's name and list the person's address or telephone number in substantially the same manner as on the person's voter registry card, or the signature will not be counted.

(2) Numbered lines must follow the heading. Each numbered line must contain spaces for the signature, residence address, legislative representative district number, ~~and~~ *and* printed last name *and first and middle initials* of the signer. In place of a residence address, the signer may provide the signer's post-office address or the signer's home telephone number. An address provided on a petition by the signer that differs from the signer's address as shown on the signer's voter registration card may not be used as the only means to disqualify the signature of that petition signer."

**Section 6.** Section 13-27-206, MCA, is amended to read:

**"13-27-206. Petition for initiative for constitutional convention.** (1) The following is substantially the form for a petition to direct the secretary of state to submit to the qualified voters the question of whether there will be a constitutional convention:

PETITION TO PLACE INITIATIVE NO.\_\_\_\_, CALLING FOR A  
CONSTITUTIONAL CONVENTION, ON THE ELECTION BALLOT

(a) If 10% of the voters in each of 40 legislative districts sign this petition and the total number of voters signing this petition is ....., the question of whether to have a constitutional convention will appear on the next general election ballot. If a majority of voters vote for the constitutional convention, the legislature shall call for a constitutional convention at its next session.

(b) We, the undersigned Montana voters, propose that the secretary of state place the question of whether to hold a constitutional convention on the .... .., 20...., general election ballot:

(Title of the initiative written pursuant to 13-27-312)

(Statement of implication written pursuant to 13-27-312)

(c) A signature on this petition is only to put the call for a constitutional convention on the ballot and does not necessarily mean the signer is in favor of calling a constitutional convention.

(d)

#### WARNING

A person who purposefully signs a name other than the person's own to this petition, who signs more than once for the same issue at one election, or who signs when not a legally registered Montana voter is subject to a \$500 fine or 6 months in jail, or both.

(e) Each person is required to sign the person's name and list the person's address or telephone number in substantially the same manner as on the person's voter registration card or the signature will not be counted.

(2) Numbered lines must follow the heading. Each numbered line must also contain spaces for the signature, residence address, legislative representative district number, ~~and~~ *and* printed last name *and first and middle initials* of the signer. In place of a residence address, the signer may provide the signer's post-office address or the signer's home telephone number. An address provided on a petition by the signer that differs from the signer's address as shown on the signer's voter registration card may not be used as the only means to disqualify the signature of that petition signer."

**Section 7.** Section 13-27-207, MCA, is amended to read:

**“13-27-207. Petition for initiative for constitutional amendment.** (1) The following is substantially the form for a petition for an initiative to amend the constitution:

PETITION TO PLACE CONSTITUTIONAL AMENDMENT NO. \_\_\_\_ ON  
THE ELECTION BALLOT

(a) If 10% of the voters in each of ~~40 legislative districts~~ *one-half of the counties* sign this petition and the total number of voters signing the petition is ....., this constitutional amendment will appear on the next general election ballot. If a majority of voters vote for this amendment at that election, it will become part of the constitution.

(b) We, the undersigned Montana voters, propose that the secretary of state place the following constitutional amendment on the ....., 20..., general election ballot:

(Title of the proposed constitutional amendment  
written pursuant to 13-27-312)

(Statement of implication written pursuant to 13-27-312)

(c) Voters are urged to read the complete text of the measure, which appears (on the reverse side of, attached to, etc., as applicable) this sheet. A signature on this petition is only to put the constitutional amendment on the ballot and does not necessarily mean the signer agrees with the amendment.

(d)

WARNING

A person who purposefully signs a name other than the person's own to this petition, who signs more than once for the same issue at one election, or who signs when not a legally registered Montana voter is subject to a \$500 fine, 6 months in jail, or both.

(e) Each person is required to sign the person's name and list the person's address or telephone number in substantially the same manner as on the person's voter registration card or the signature will not be counted.

(2) Numbered lines must follow the heading. Each numbered line must contain spaces for the signature, residence address, ~~legislative representative district number~~ *county of residence*, ~~and~~ and printed last name *and first and middle initials* of the signer. In place of a residence address, the signer may provide the signer's post-office address or the signer's home telephone number. An address provided on a petition by the signer that differs from the signer's address as shown on the signer's voter registration card may not be used as the only means to disqualify the signature of that petition signer.”

**Section 8.** Section 13-27-301, MCA, is amended to read:

**“13-27-301. Submission of petition sheets — withdrawal of signatures.** (1) Signed sheets or sections of petitions ~~shall~~ *with original signatures must* be submitted to the official responsible for registration of electors in the county in which the signatures were obtained no sooner than 9 months and no later than 4 weeks before the final date for filing the petition with the secretary of state.

(2) *If it is impractical to submit signed sheets or sections of petitions with original signatures by the deadline provided in subsection (1), a copy or facsimile may be submitted to the proper county official by the deadline. Signed sheets or sections of petitions with original signatures must be submitted within 7*



*calendar days after the deadline. Failure to submit signed sheets or sections of petitions with original signatures within 7 calendar days will invalidate the signed sheets or sections submitted by copy or facsimile.*

(2)(3) Signatures may be withdrawn from a petition for constitutional amendment, constitutional convention, initiative, or referendum up to the time of final submission of petition sheets as provided in subsection (1). The secretary of state shall prescribe the form to be used by an elector desiring to have ~~his~~ *the elector's* signature withdrawn from a petition."

**Section 9.** Section 13-27-302, MCA, is amended to read:

**"13-27-302. Certification of signatures.** An affidavit, in substantially the following form, must be attached to each sheet or section submitted to the county official:

I, (name of person who ~~circulated this petition~~ *is the signature gatherer*), swear that I ~~circulated~~ *gathered* or assisted in ~~circulating~~ *gathering* the signatures on the petition to which this affidavit is attached *on the stated dates*, that I believe the signatures on the petition are genuine, are the signatures of the persons whose names they purport to be, and are the signatures of Montana electors who are registered at the address or have the telephone number following the person's signature, and that the signers knew the contents of the petition before signing the petition.

.....  
(date on which the first signature was gathered)

.....  
(Signature of petition ~~circulator~~ *signature gatherer*)

.....  
(Address of petition ~~circulator~~ *signature gatherer*)

Subscribed and sworn to before me this ... day of ....., 20...

Seal .....  
(Person authorized to take oaths)  
.....  
(Title or notarial information)"

**Section 10.** Section 13-27-303, MCA, is amended to read:

**"13-27-303. Verification of signatures by county official — allocating voters following reapportionment — duplicate signatures.**

(1) Except as required by 13-27-104, within 4 weeks after receiving the sheets or sections of a petition, the county official shall check the names of all signers to verify they are registered electors of the county. In addition, the official shall randomly select signatures on each sheet or section and compare them with the signatures of the electors as they appear in the registration records of the office. If all the randomly selected signatures appear to be genuine, the number of signatures of registered electors on the sheet or section may be certified to the secretary of state without further comparison of signatures. If any of the randomly selected signatures do not appear to be genuine, all signatures on that sheet or section must be compared with the signatures in the registration records of the office.

(2) For the purpose of allocating the signatures of voters among the several legislative representative districts of the state as required to certify a petition

for a ~~ballot issue referendum~~ or a call of a constitutional convention under the provisions of this chapter following the filing of a districting and apportionment plan under 5-1-111 and before the first gubernatorial election following the filing of the plan, the new districts must be used with the number of signatures needed for each legislative representative district being the total votes cast for governor in the last gubernatorial election divided by the number of legislative representative districts.

(3) Upon discovery of fraudulent signatures or duplicate signatures of an elector on any one issue, the election administrator may submit the name of the elector or the petition circulator, or both, to the county attorney to be investigated under the provisions of 13-27-106 and 13-35-207.”

**Section 11.** Section 13-27-304, MCA, is amended to read:

**“13-27-304. County official to forward verified sheets.** The county official verifying the number of registered electors signing the petition shall forward it to the secretary of state by certified mail with a certificate in substantially the following form attached:

To the Honorable ....., Secretary of State of the state of Montana:

I, ....., ..... (title) of the County of ....., certify that I have examined the attached (section containing .... sheets) or (.... sheets) of the petition for (referendum, initiative, constitutional convention, or constitutional amendment) No. .... in the manner prescribed by law; and I believe that .... (number) signatures in (Legislative Representative District No. .... or the County of....) (repeat for each district or county included in sheet or section) are valid; and I further certify that the affidavit of the circulator of the (sheet) (section) of the petition is attached and the post-office address, residence address, or telephone number ~~and legislative representative district number~~ is completed for each valid signature.

Signed:.....(Date) .....(Signature)  
Seal .....(Title)”

**Section 12.** Section 13-27-307, MCA, is amended to read:

**“13-27-307. Consideration and tabulation of signatures by secretary of state.** (1) The secretary of state shall consider and tabulate only the signatures on petitions that are certified by the proper county official, ~~and each certificate is prima facie evidence of the facts stated in the certificate. The secretary of state may reject any petition that does not meet statutory requirements. The secretary of state shall return a rejected petition to the proper county official. The county official shall correct the error, when applicable, or send or deliver the rejected petition to the signature gatherer. However, the~~ The secretary of state may consider and tabulate any signature not certified by the county official that is certified by a notary public of the county in which the signer resides to be the genuine signature of an elector legally qualified to sign the petition.

(2) The official certificate of the notary public for any signature not certified as valid by the county official must be in substantially the following form:

State of Montana)  
 )ss.  
County of..... )

I, ..... (name), a ~~du~~ly qualified and acting notary public in and for the above-named county and state, certify that I am personally acquainted with all of the following-named electors whose signatures are affixed to the attached (petition) (copy of a petition) and I know that they are registered electors of the state of Montana and of the county~~and~~ or legislative district written after their names in the petition and that their post-office addresses are correctly stated in the petition.

.....(Names of electors)

In testimony whereof, I have set my hand and official seal this.... day of....., 20...

.....(Signature)

Seal .....(Notarial information)"

**Section 13. Effective date.** [This act] is effective July 1, 2003.

Approved April 15, 2003

**CHAPTER NO. 324**

[HB 303]

AN ACT MODIFYING THE DEFINITION OF "FACILITY" UNDER THE MONTANA MAJOR FACILITY SITING ACT AS IT RELATES TO TRANSMISSION LINES; AMENDING SECTION 75-20-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 75-20-104, MCA, is amended to read:

**"75-20-104. Definitions.** In this chapter, unless the context requires otherwise, the following definitions apply:

- (1) "Addition thereto" means the installation of new machinery and equipment that would significantly change the conditions under which the facility is operated.
- (2) "Application" means an application for a certificate submitted in accordance with this chapter and the rules adopted under this chapter.
- (3) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, pipelines, transmission substations, storage ponds, reservoirs, and any other device or equipment associated with the delivery of the energy form or product produced by a facility, except that the term does not include a facility or a natural gas or crude oil gathering line 25 inches or less in inside diameter.
- (4) "Board" means the board of environmental review provided for in 2-15-3502.
- (5) "Certificate" means the certificate of environmental compatibility issued by the department under this chapter that is required for the construction or operation of a facility.
- (6) "Commence to construct" means:
  - (a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in

securing geological data, including necessary borings to ascertain foundation conditions;

(b) the fracturing of underground formations by any means if the activity is related to the possible future development of a gasification facility or a facility employing geothermal resources but does not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation;

(c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or rights-of-way upon or over which a facility may be constructed;

(d) the relocation or upgrading of an existing facility defined by subsection (8)(a) or (8)(b), including upgrading to a design capacity covered by subsection (8)(a), except that the term does not include normal maintenance or repair of an existing facility.

(7) "Department" means the department of environmental quality provided for in 2-15-3501.

(8) "Facility" means:

(a) each electric transmission line and associated facilities of a design capacity of more than 69 kilovolts, except that the term:

(i) does not include an electric transmission line and associated facilities of a design capacity of 230 kilovolts or less and 10 miles or less in length; ~~and~~

(ii) does not include an electric transmission line ~~with a design capacity of more than 69 kilovolts but less than 230 kilovolts~~ *with a design capacity of more than 69 kilovolts but less than 230 kilovolts* for which the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline; *and*

*(iii) does not include an electric transmission line that is less than 150 miles in length and extends from an electrical generation facility, as defined in 15-24-3001(4), to the point at which the transmission line connects to a regional transmission grid at an existing transmission substation or other facility for which the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;*

(b) (i) each pipeline, whether partially or wholly within the state, greater than 25 inches in inside diameter and 50 miles in length, and associated facilities, except that the term does not include:

(A) a pipeline within the boundaries of the state that is used exclusively for the irrigation of agricultural crops or for drinking water; or

(B) a pipeline greater than 25 inches in inside diameter and 50 miles in length for which the person planning to construct the pipeline has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(ii) each pipeline, whether partially or wholly within the state, greater than 17 inches in inside diameter and 30 miles in length, and associated facilities used to transport coal suspended in water;

(c) any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use, or conversion of energy,

designed for or capable of producing geothermally derived power equivalent to 25 million Btu's per hour or more or any addition thereto, except pollution control facilities approved by the department and added to an existing plant; or

(d) for the purposes of 75-20-204 only, a plant, unit, or other facility capable of generating 50 megawatts of hydroelectric power or more or any addition thereto.

(9) "Person" means any individual, group, firm, partnership, corporation, limited liability company, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

(10) "Transmission substation" means any structure, device, or equipment assemblage, commonly located and designed for voltage regulation, circuit protection, or switching necessary for the construction or operation of a proposed transmission line.

(11) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."

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

Approved April 15, 2003

## CHAPTER NO. 325

[HB 384]

AN ACT CREATING A DEMONSTRATION PROJECT THAT ALLOWS HEALTH INSURANCE ISSUERS TO OFFER A LIMITED COVERAGE INDIVIDUAL HEALTH BENEFIT PLAN OR A MANAGED CARE PLAN; PROVIDING THAT THE INSURER MUST SPECIFY CLEARLY WHICH STATE-REQUIRED BENEFITS OR COVERAGES ARE NOT INCLUDED IN THE OFFERED LIMITED COVERAGE INDIVIDUAL PLAN; AMENDING SECTIONS 33-22-301, 33-22-706, 33-30-1001, 33-31-111, 33-31-202, 33-31-301, 33-36-201, AND 33-36-205, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

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

**Section 1. Legislative intent — purpose.** (1) It is the intent of the legislature to provide for a demonstration project to allow a health service corporation, a health maintenance organization, or a health insurer to test the feasibility of a product to extend health care benefits to uninsured residents of Montana.

(2) It is the purpose of a demonstration project to provide coverage for health care services not otherwise available to uninsured residents of Montana.

**Section 2. Limited coverage individual health benefit plan or managed care plan — demonstration project — criteria — rulemaking.**

(1) The commissioner of insurance may approve a 12-month demonstration project that allows a health insurance issuer to offer a limited coverage individual health benefit plan or managed care plan. The criteria for approval of a 12-month demonstration project include but are not limited to the following:

(a) the plan must include significant outpatient services and may not consist of inpatient benefits only;

(b) the plan may be offered only to residents of Montana who have been uninsured for 90 days or longer; and

(c) the commissioner may adopt rules that describe additional criteria to be used to determine approval of demonstration projects. Additional criteria must relate to the purpose as stated in [section 1(2)].

(2) The health benefit plan or managed care plan must specify the health services that are included and must specifically list the health services that will be limited or not be covered from the partial list of state-required coverage in subsection (3). The limitations and exclusions of the plan must be prominently displayed on the application and on the outline of coverage required by 33-22-244.

(3) Subject to subsection (4), if specifically listed as a limitation or an exclusion of coverage in the proposal, a demonstration project may limit or exclude the following health services from its health benefit plan or managed care plan:

(a) coverage of a newborn, as provided in 33-22-301, 33-30-1001, and 33-31-301(3)(e), which may be subject only to the same extent of the limitations and exclusions contained in the parent's policy;

(b) coverage for severe mental illness, as provided in 33-22-706;

(c) coverage for mental health services, as provided in 33-31-301(3)(g)(i);

(d) benefits for emergency services, as provided in 33-36-201 and 33-36-205;

(e) coverage for certain basic health care services described in 33-31-102(2)(b) and (2)(h)(v); or

(f) services provided by a specific category of licensed health care practitioner to be provided to the covered person for a health-related condition in a health benefit plan or managed care plan, including services described in 33-22-125 and 33-30-1017.

(4) All health benefit plan and managed care plan demonstration projects are subject to the following provisions:

(a) the requirement that any plan that covers physical illness generally must cover severe mental illness in a way that is no less favorable than that level provided for other physical illness generally as required by federal law;

(b) the prohibition against discrimination in 49-2-309;

(c) except as provided in subsection (3)(d), the provisions in Title 33, chapter 36, regarding network adequacy and quality assurance; and

(d) all other applicable provisions of Title 33, except those listed in subsection (3).

(5) Upon a renewal request and approval by the insurance commissioner, a demonstration project may be renewed for additional 12-month increments for a maximum total of 5 years.

**Section 3. Requirements of demonstration project.** Any health insurance issuer that participates in the demonstration project must:

(1) collect health risk assessment information at enrollment and reenrollment, which must be collected without reference to an individual, must allow individuals to remain anonymous, and must be reported to the commissioner only in the aggregate; and

(2) collect information on any uncompensated care that was received by the covered person directly related to the exclusion of benefits under [section 2].

**Section 4.** Section 33-22-301, MCA, is amended to read:

**“33-22-301. Coverage of newborn under disability policy.** (1) ~~Each~~ *Except as provided in [section 2], 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~~ *Except as provided in [section 2], 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 5.** Section 33-22-706, MCA, is amended to read:

**“33-22-706. Coverage for severe mental illness — definition.** (1) ~~A~~ *Except as provided in [section 2(3)] and subject to [section 2(4)], a* policy or certificate of health insurance or disability insurance that is delivered, issued for delivery, renewed, extended, or modified in this state must provide a level of benefits for the necessary care and treatment of severe mental illness, as defined in subsection (6), that is no less favorable than that level provided for other physical illness generally. Benefits for treatment of severe mental illness may be subject to managed care provisions contained in the policy or certificate.

(2) Benefits provided pursuant to subsection (1) include but are not limited to:

- (a) inpatient hospital services;
- (b) outpatient services;
- (c) rehabilitative services;
- (d) medication;

(e) services rendered by a licensed physician, licensed advanced practice registered nurse with a specialty in mental health, licensed social worker, licensed psychologist, or licensed professional counselor when those services are part of a treatment plan recommended and authorized by a licensed physician; and

(f) services rendered by a licensed advanced practice registered nurse with prescriptive authority and specializing in mental health.

(3) Benefits provided pursuant to this section must be included when determining maximum lifetime benefits, copayments, and deductibles.

(4) (a) This section applies to health service benefits provided by:

- (i) individual and group health and disability insurance;
- (ii) individual and group hospital or medical expense insurance;
- (iii) medical subscriber contracts;
- (iv) membership contracts of a health service corporation;
- (v) health maintenance organizations; and
- (vi) the comprehensive health association created by 33-22-1503.

(b) This section does not apply to the following coverages:

- (i) blanket;
- (ii) short-term travel;
- (iii) accident only;
- (iv) limited or specific disease;
- (v) Title XVIII of the Social Security Act (medicare); or
- (vi) any other similar coverage under state or federal government plans.

(5) This section does not limit benefits for an illness or condition that does not constitute a severe mental illness, as defined in subsection (6), but that does constitute a mental illness, as defined in 33-22-702.

(6) As used in this section, "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."

**Section 6.** Section 33-30-1001, MCA, is amended to read:

**"33-30-1001. Newborn infants covered by insurance by health service corporation.** *Except as provided in [section 2], a disability insurance plan or group disability insurance plan issued by a health service corporation may not be issued or amended in this state if it contains any disclaimer, waiver, preexisting condition exclusion, or other limitation of coverage relative to the accident and sickness coverage or insurability of newborn infants of the persons insured from and after the moment of birth. Each policy must contain a provision granting immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of any insured person. 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 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 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, *except as provided in [section 2]*; or

(e) the requirements of Title 33, chapter 18, part 9.

(7) ~~Chapter~~ *Except as provided in [section 2], Title 33, chapter 1, parts 12 and 13, of this title, 33-2-1114, 33-2-1211, 33-2-1212, 33-3-422, 33-3-431, 33-15-308, 33-22-129, 33-22-131, 33-22-136, 33-22-141, 33-22-142, 33-22-244, 33-22-246, 33-22-247, 33-22-514, 33-22-521, 33-22-523, 33-22-524, 33-22-526, and 33-22-706 apply to health maintenance organizations.*

**Section 8.** Section 33-31-202, MCA, is amended to read:

**“33-31-202. Issuance of certificate of authority.** (1) The commissioner shall issue or deny a certificate of authority to any person filing an application pursuant to 33-31-201 within 180 days after receipt of the application. The commissioner shall grant a certificate of authority upon payment of the application fee prescribed in 33-31-212 if the commissioner is satisfied that each of the following conditions is met:

(a) The persons responsible for the conduct of the applicant’s affairs are competent and trustworthy.

(b) The health maintenance organization will effectively provide or arrange for the provision of basic health care services, *except as provided in [section 2]*, on a prepaid basis, through insurance or otherwise, except to the extent of reasonable requirements for copayments. This requirement does not apply to the physical or mental health care services provided by a health maintenance organization to a person receiving medicaid services under the Montana medicaid program as established in Title 53, chapter 6.

(c) The health maintenance organization is financially responsible and can reasonably be expected to meet its obligations to enrollees and prospective enrollees. In making this determination, the commissioner may consider:

(i) the financial soundness of the arrangements for health care services and the schedule of charges used in connection with the services;

(ii) the adequacy of working capital;

(iii) any agreement with an insurer, a health service corporation, a government, or any other organization for ensuring the payment of the cost of health care services or the provision for automatic applicability of an alternative coverage in the event of discontinuance of the health maintenance organization;

(iv) any agreement with providers for the provision of health care services;

(v) any deposit of cash or securities submitted in accordance with 33-31-216; and

(vi) any additional information that the commissioner may reasonably require.

(d) The enrollees must be afforded an opportunity to participate in matters of policy and operation pursuant to 33-31-222.

(e) Nothing in the proposed method of operation, as shown by the information submitted pursuant to 33-31-201 or by independent investigation, violates any provision of this chapter or rules adopted by the commissioner.

(2) The commissioner may deny a certificate of authority only if the requirements of 33-31-404 are complied with.

(3) The commissioner shall examine each health maintenance organization applying for an initial certificate of authority to do business in this state. In lieu of making an examination under this part of any health maintenance organization domiciled in another state, the commissioner may accept an examination report on the organization prepared by the insurance department of the organization's state of domicile."

**Section 9.** Section 33-31-301, MCA, is amended to read:

**"33-31-301. Evidence of coverage — schedule of charges for health care services.** (1) Each enrollee residing in this state is entitled to an evidence of coverage. The health maintenance organization shall issue the evidence of coverage, except that if the enrollee obtains coverage through an insurance policy issued by an insurer or a contract issued by a health service corporation, whether by option or otherwise, the insurer or the health service corporation shall issue the evidence of coverage.

(2) A health maintenance organization may not issue or deliver an enrollment form, an evidence of coverage, or an amendment to an approved enrollment form or evidence of coverage to a person in this state before a copy of the enrollment form, the evidence of coverage, or the amendment to the approved enrollment form or evidence of coverage is filed with and approved by the commissioner.

(3) An evidence of coverage issued or delivered to a person ~~resident~~ *residing* in this state may not contain a provision or statement that is untrue, misleading, or deceptive as defined in 33-31-312(1). The evidence of coverage must contain:

(a) a clear and concise statement, if a contract, or a reasonably complete summary, if a certificate, of:

(i) the health care services and the insurance or other benefits, if any, to which the enrollee is entitled;

(ii) any limitations on the services, kinds of services, or benefits to be provided, including any deductible or copayment feature;

(iii) the location at which and the manner in which information is available as to how services may be obtained;

(iv) the total amount of payment for health care services and the indemnity or service benefits, if any, that the enrollee is obligated to pay with respect to individual contracts; and

(v) a clear and understandable description of the health maintenance organization's method for resolving enrollee complaints;

(b) definitions of geographical service area, emergency care, urgent care, out-of-area services, dependent, and primary provider if these terms or terms of similar meaning are used in the evidence of coverage and have an effect on the benefits covered by the plan. The definition of geographical service area need not be stated in the text of the evidence of coverage if the definition is adequately described in an attachment that is given to each enrollee along with the evidence of coverage.

(c) clear disclosure of each provision that limits benefits or access to service in the exclusions, limitations, and exceptions sections of the evidence of coverage. The exclusions, limitations, and exceptions that must be disclosed include but are not limited to:

(i) emergency and urgent care;

(ii) restrictions on the selection of primary or referral providers;

(iii) restrictions on changing providers during the contract period;

(iv) out-of-pocket costs, including copayments and deductibles;

(v) charges for missed appointments or other administrative sanctions;

(vi) restrictions on access to care if copayments or other charges are not paid; and

(vii) any restrictions on coverage for dependents who do not reside in the service area.

(d) clear disclosure of any benefits for home health care, skilled nursing care, kidney disease treatment, diabetes, maternity benefits for dependent children, alcoholism and other drug abuse, and nervous and mental disorders;

(e) *except as provided in [section 2]*, a provision requiring immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of an enrollee or the enrollee's dependents;

(f) a provision providing coverage as required in 33-22-133;

(g) *except as provided in [section 2]*, a provision requiring medical treatment and referral services to appropriate ancillary services for mental illness and for the abuse of or addiction to alcohol or drugs in accordance with the limits and coverage provided in Title 33, chapter 22, part 7; however:

(i) after the primary care physician refers an enrollee for treatment of and appropriate ancillary services for mental illness, alcoholism, or drug addiction, the health maintenance organization may not limit the enrollee to a health maintenance organization provider for the treatment of and appropriate ancillary services for mental illness, alcoholism, or drug addiction;

(ii) if an enrollee chooses a provider other than the health maintenance organization provider for treatment and referral services, the enrollee's designated provider shall limit treatment and services to the scope of the referral in order to receive payment from the health maintenance organization;

(iii) the amount paid by the health maintenance organization to the enrollee's designated provider may not exceed the amount paid by the health maintenance organization to one of its providers for equivalent treatment or services;

(iv) the provisions of this subsection (3)(g) do not apply to services for mental illness provided under the Montana medicaid program as established in Title 53, chapter 6;

(h) a provision as follows:

"Conformity With State Statutes: Any provision of this evidence of coverage that on its effective date is in conflict with the statutes of the state in which the insured resides on that date is amended to conform to the minimum requirements of those statutes."

(i) a provision that the health maintenance organization shall issue, without evidence of insurability, to the enrollee, dependents, or family members continuing coverage on the enrollee, dependents, or family members:

(i) if the evidence of coverage or any portion of it on an enrollee, dependents, or family members covered under the evidence of coverage ceases because of termination of employment or termination of membership in the class or classes eligible for coverage under the policy or because the employer discontinues the business or the coverage;

(ii) if the enrollee had been enrolled in the health maintenance organization for a period of 3 months preceding the termination of group coverage; and

(iii) if the enrollee applied for continuing coverage within 31 days after the termination of group coverage. The conversion contract may not exclude, as a preexisting condition, any condition covered by the group contract from which the enrollee converts.

(j) a provision that clearly describes the amount of money an enrollee shall pay to the health maintenance organization to be covered for basic health care services.

(4) A health maintenance organization may amend an enrollment form or an evidence of coverage in a separate document if the separate document is filed with and approved by the commissioner and issued to the enrollee.

(5) (a) ~~A~~ *Except as provided in [section 2],* a health maintenance organization shall provide the same coverage for newborn infants, required by subsection (3)(e), as it provides for enrollees, except that for newborn infants, there may be no waiting or elimination periods. A health maintenance organization may not assess a deductible or reduce benefits applicable to the coverage for newborn infants unless the deductible or reduction in benefits is consistent with the deductible or reduction in benefits applicable to all covered persons.

(b) ~~A~~ *Except as provided in [section 2],* a health maintenance organization may not issue or amend an evidence of coverage 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 enrollee or dependents from and after the moment of birth.

(c) If a health maintenance organization requires payment of a specific fee to provide coverage of a newborn infant beyond 31 days of the date of birth of the infant, the evidence of coverage may contain a provision that requires notification to the health maintenance organization, within 31 days after the date of birth, of the birth of an infant and payment of the required fee.

(6) The commissioner shall, within 60 days, approve a form if the requirements of subsections (1) through (5) are met. A health maintenance organization may not issue a form before the commissioner approves the form. If the commissioner disapproves the filing, the commissioner shall notify the filer. In the notice, the commissioner shall specify the reasons for the disapproval. The commissioner shall grant a hearing within 30 days after receipt of a written request by the filer.

(7) The commissioner may require a health maintenance organization to submit any relevant information considered necessary in determining whether to approve or disapprove a filing made pursuant to this section.”

**Section 10.** Section 33-36-201, MCA, is amended to read:

**“33-36-201. Network adequacy — standards — access plan required.**

(1) A health carrier offering a managed care plan in this state shall maintain a network that is sufficient in numbers and types of providers to ensure that all services to covered persons are accessible without unreasonable delay. Sufficiency in number and type of provider is determined in accordance with the requirements of this section. ~~Covered~~ *Except as provided in [section 2], covered* persons must have access to emergency care 24 hours a day, 7 days a week. A health carrier providing a managed care plan shall use reasonable criteria to determine sufficiency. The criteria may include but are not limited to:

- (a) a ratio of specialty care providers to covered persons;
- (b) a ratio of primary care providers to covered persons;
- (c) geographic accessibility;
- (d) waiting times for appointments with participating providers;
- (e) hours of operation; or
- (f) the volume of technological and specialty services available to serve the needs of covered persons requiring technologically advanced or specialty care.

(2) Whenever a health carrier has an insufficient number or type of participating providers to provide a covered benefit, the health carrier shall ensure that the covered person obtains the covered benefit at no greater cost to the covered person than if the covered benefit were obtained from participating providers or shall make other arrangements acceptable to the department.

(3) The health carrier shall establish and maintain adequate provider networks to ensure reasonable proximity of participating providers to the businesses or personal residences of covered persons. In determining whether a health carrier has complied with this requirement, consideration must be given to the relative availability of health care providers in the service area under consideration.

(4) ~~A health carrier offering a managed care plan in this state on October 1, 1999, shall file with the department on October 1, 1999, an access plan complying with subsection (6) and the rules of the department. A health carrier offering a managed care plan in this state for the first time after October 1, 1999,~~ shall file with the department an access plan meeting the requirements of

subsection (6) and the rules of the department before offering the managed care plan. A plan must be filed with the department in a manner and form complying with the rules of the department. A health carrier shall file any subsequent material changes in its access plan with the department within 30 days of implementation of the change.

(5) A health carrier may request the department to designate parts of its access plan as proprietary or competitive information, and when designated, that part may not be made public. For the purposes of this section, information is proprietary or competitive if revealing the information would cause the health carrier's competitors to obtain valuable business information. A health carrier shall make the access plans, absent proprietary information, available on its business premises and shall provide a copy of the plan upon request.

(6) An access plan for each managed care plan offered in this state must describe or contain at least the following:

(a) a listing of the names and specialties of the health carrier's participating providers;

(b) the health carrier's procedures for making referrals within and outside its network;

(c) the health carrier's process for monitoring and ensuring on an ongoing basis the sufficiency of the network to meet the health care needs of populations that enroll in the managed care plan;

(d) the health carrier's efforts to address the needs of covered persons with limited English proficiency and illiteracy, with diverse cultural and ethnic backgrounds, and with physical and mental disabilities;

(e) the health carrier's methods for assessing the health care needs of covered persons and their satisfaction with services;

(f) the health carrier's method of informing covered persons of the plan's services and features, including but not limited to the plan's grievance procedures, its process for choosing and changing providers, and its procedures for providing and approving emergency and specialty care;

(g) the health carrier's system for ensuring the coordination and continuity of care for covered persons referred to specialty physicians and for covered persons using ancillary services, including social services and other community resources, and for ensuring appropriate discharge planning;

(h) the health carrier's process for enabling covered persons to change primary care professionals;

(i) the health carrier's proposed plan for providing continuity of care in the event of contract termination between the health carrier and a participating provider or in the event of the health carrier's insolvency or other inability to continue operations. The description must explain how covered persons will be notified of the contract termination or the health carrier's insolvency or other cessation of operations and be transferred to other providers in a timely manner.

(j) any other information required by the department to determine compliance with this part and the rules implementing this part.

(7) The department shall ensure timely and expedited review and approval of the access plan and other requirements in this section."

**Section 11.** Section 33-36-205, MCA, is amended to read:

**“33-36-205. Emergency services — exception.** (1) A health carrier offering a managed care plan shall provide or pay for emergency services screening and emergency services and may not require prior authorization for either of those services. If an emergency services screening determines that emergency services or emergency services of a particular type are unnecessary for a covered person, emergency services or emergency services of the type determined unnecessary by the screening need not be covered by the health carrier unless otherwise covered under the health benefit plan. However, if screening determines that emergency services or emergency services of a particular type are necessary, those services must be covered by the health carrier. A health carrier shall cover emergency services if the health carrier, acting through a participating provider or other authorized representative, has authorized the provision of emergency services.

(2) A health carrier shall provide or pay for emergency services obtained from a nonnetwork provider within the service area of a managed care plan and may not require prior authorization of those services if use of a participating provider would result in a delay that would worsen the medical condition of the covered person or if a provision of federal, state, or local law requires the use of a specific provider.

(3) If a participating provider or other authorized representative of a health carrier authorizes emergency services, the health carrier may not subsequently retract its authorization after the emergency services have been provided or reduce payment for an item or health care services furnished in reliance on approval unless the approval was based on a material misrepresentation about the covered person's medical condition made by the provider of emergency services.

(4) Coverage of emergency services is subject to applicable coinsurance, copayments, and deductibles.

(5) For postevaluation or poststabilization services required immediately after receipt of emergency services, a health carrier shall provide access to an authorized representative 24 hours a day, 7 days a week, to facilitate review.

(6) *The provisions of this section do not apply to a limited coverage individual managed care plan as provided in [sections 1 through 3].*”

**Section 12. Codification instruction.** [Sections 1 through 3] are intended to be codified as an integral part of Title 33, chapter 22, part 2, and the provisions of Title 33, chapter 22, part 2, apply to [sections 1 through 3].

**Section 13. Effective date.** [This act] is effective July 1, 2003.

**Section 14. Termination.** [This act] terminates June 30, 2009.

Approved April 15, 2003

## CHAPTER NO. 326

[HB 431]

AN ACT PROVIDING LOCAL GOVERNMENTS WITH THE RIGHT OF FIRST REFUSAL ON CERTAIN LANDS BEING SOLD BY THE STATE; AMENDING SECTION 77-2-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 77-2-306, MCA, is amended to read:

**“77-2-306. Who may purchase.** (1) State lands ~~shall~~ *may* be sold only to citizens of the United States, persons who have declared their intentions to become citizens, corporations organized under the laws of this state, or towns, cities, counties, or consolidated local governments of this state. ~~No~~ A person ~~shall be~~ *is not* qualified to purchase state land who has not reached the age of 18 years. As far as possible to determine, the lands ~~shall~~ *must* be sold only to actual settlers or to persons who will improve the ~~same~~ lands and not to persons who are likely to hold ~~such~~ the lands for speculative purposes, intending to resell the ~~same~~ lands at a higher price without having added anything to their value.

(2) State lands may be sold to any sovereign state of the United States or to any board of trustees or public corporation or agency of ~~such~~ any state created by ~~such~~ that state as an agency or political subdivision ~~thereof~~ of that state. ~~Said~~ State lands may be purchased in the quantities set forth in 77-2-307 for use by ~~such~~ a state, board of trustees, public corporation, agency, or political subdivision for educational or scientific purposes.

(3) State lands located wholly within the exterior boundaries of the tribal government’s reservation as recognized by the federal government may be sold to a tribal government, as defined in 18-11-102.

(4) ~~No~~ A sale involving land in excess of the ~~acreage limitations in 77-2-307~~ 160 acres may *not* be made under this section without first consulting with the board of county commissioners of the county or counties in which the lands to be sold are located.

(5) *A local government that sold or transferred property to the state shall have the right of first refusal if the state subsequently offers the property for sale. For purposes of this subsection, “right of first refusal” means the right to have the first opportunity to purchase the property for not less than fair market value when the property becomes available or the right to meet any other offer.*

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

Approved April 15, 2003

## CHAPTER NO. 327

[HB 435]

AN ACT CLARIFYING THAT A LEGISLATOR MAY NOT ACCEPT A FEE OR CERTAIN OTHER COMPENSATION FOR SPEAKING TO A MONTANA STATE AGENCY OR POLITICAL SUBDIVISION; AMENDING SECTION 2-2-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 2-2-111, MCA, is amended to read:

**“2-2-111. Rules of conduct for legislators.** Proof of commission of any act enumerated in this section is proof that the legislator committing the act has breached the legislator’s public duty. A legislator may not:

(1) accept a fee, contingent fee, or any other compensation, except the official compensation provided by statute, for promoting or opposing the passage of legislation;



(2) seek other employment for the legislator or solicit a contract for the legislator's services by the use of the office; or

(3) accept a fee or other compensation, except as provided for in 5-2-302, from a Montana state agency or a political subdivision of the state of Montana for speaking to the agency or political subdivision."

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

Approved April 15, 2003

## CHAPTER NO. 328

[HB 602]

AN ACT REQUIRING DEVELOPMENT OF A LEASING PREFERENCE GUIDELINE THAT ENCOURAGES COST-EFFICIENCY AND APPROPRIATE USE; REQUIRING A REPORT ON THE PREFERENCE GUIDELINE TO BE SUBMITTED TO THE REVENUE AND TRANSPORTATION INTERIM COMMITTEE; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1. Vehicle purchases — leasing guideline.** (1) (a) Prior to June 1, 2004, the office of budget and program planning, in conjunction with the motor vehicle pool, shall devise for use by state agencies a leasing preference guideline for light vehicles, as defined in 61-1-139. The guideline is intended to encourage appropriate, cost-effective use of light vehicles. Factors to be addressed include multiple occupant use versus single occupant use, weather conditions at the time of use, and vehicle destination. The guideline must include stringent limitations on the use of personal vehicles at state expense, including a requirement that employees accept substitute vehicles when requested vehicles are not available.

(b) The leasing preference guideline must be submitted for review to the revenue and transportation interim committee by July 1, 2004.

(2) Subsection (1) applies to the motor pools of the Montana university system. The board of regents may exempt a purchase on a case-by-case basis.

**Section 2. Effective date.** [This act] is effective July 1, 2003.

Approved April 15, 2003

## CHAPTER NO. 329

[SB 13]

AN ACT SUBSTITUTING 0.08 FOR 0.10 IN THE LAWS RELATING TO DRIVING UNDER THE INFLUENCE AND DRIVING WITH AN ILLEGAL ALCOHOL CONCENTRATION IN THE BODY; REDUCING THE BLOOD ALCOHOL CONCENTRATION FROM 0.18 TO 0.16 FOR PURPOSES OF REQUIRING AN IGNITION INTERLOCK DEVICE; AMENDING SECTIONS 61-5-205, 61-5-208, 61-8-401, 61-8-406, 61-8-442, AND 61-11-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 61-5-205, MCA, is amended to read:

**“61-5-205. Mandatory revocation or suspension of license upon proper authority.** (1) The department upon proper authority shall revoke the driver's license or the operating privilege of a driver upon receiving a record of the driver's conviction of or forfeiture of bail not vacated for any of the following offenses, when the conviction or forfeiture has become final:

- (a) negligent homicide resulting from the operation of a motor vehicle;
- (b) driving a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs, except as provided in 61-5-208, or operation of a motor vehicle by a person with a blood alcohol concentration of ~~0.10~~ 0.08 or more;
- (c) any felony in the commission of which a motor vehicle is used;
- (d) failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;
- (e) perjury or the making of a false affidavit or statement under oath to the department under this chapter or under any other law relating to the ownership or operation of motor vehicles;
- (f) conviction or forfeiture of bail not vacated upon three charges of reckless driving committed within a period of 12 months; or
- (g) negligent vehicular assault as defined in 45-5-205 involving a motor vehicle.

(2) The department upon proper authority shall suspend the driver's license or the operating privilege of a driver upon receiving a record of the driver's conviction of or forfeiture of bail not vacated for a theft offense under 45-6-301 when the conviction or forfeiture has become final if the theft consisted of theft of motor vehicle fuel and a motor vehicle was used in the commission of the offense. The suspension must be for 30 days for a first offense, 6 months for a second offense, and 1 year for a third or subsequent offense.”

**Section 2.** Section 61-5-208, MCA, is amended to read:

**“61-5-208. Period of suspension or revocation — probationary license — ignition interlock device required on second or subsequent offense.** (1) The department may not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways for a period of more than 1 year, except as otherwise permitted by law.

(2) (a) Except as provided in 61-2-302, 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) When a person is convicted or forfeits bail or collateral not vacated for the offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs or for the offense of operation of a motor vehicle by a person with alcohol concentration of ~~0.10~~ 0.08 or more, the department shall, upon receiving a report of conviction or forfeiture of bail or collateral not vacated, suspend the driver's license or driving privilege of the person for a period of 6 months. Upon receiving a report of a conviction or forfeiture of bail or collateral for a second, third, or subsequent offense within 5 years of the first offense, the department shall

revoke the license or driving privilege of the person for a period of 1 year and, upon issuance of any restricted probationary license during the period of revocation, restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device. If the 1-year period passes and the person has not completed a chemical dependency education course, treatment, or both, as ordered by the sentencing court, the license revocation remains in effect until the course, treatment, or both, are completed.

(c) For the purposes of subsection (2)(b), a person is considered to have committed a second, third, or subsequent offense if fewer than 5 years have passed between the date of an offense that resulted in a prior conviction and the date of the offense that resulted in the most recent conviction.

(3) (a) If a person pays the reinstatement fee required in 61-2-107 and provides the department proof of compliance with an ignition interlock restriction imposed under 61-8-442, the department shall stay the license suspension of a person who has been convicted of a violation of 61-8-401 or 61-8-406 and return the person's driver's license. The stay must remain in effect until the period of suspension has expired and any required chemical dependency education course, treatment, or both, have been completed.

(b) If the department receives notice from a court, peace officer, or ignition interlock vendor that the person has violated the court-imposed ignition interlock restriction by, including but not limited to operating a motor vehicle not equipped with the device, tampering with the device, or removing the device before the period of restriction has expired, the department shall lift the stay and reinstate the license suspension for the remainder of the time period. The department may not issue a probationary driver's license to a person whose license suspension has been reinstated because of violation of an ignition interlock restriction.

(4) The period for all revocations made mandatory by 61-5-205 is 1 year except as provided in subsection (2).

(5) The period of revocation for a person convicted of any offense that makes mandatory the revocation of the person's driver's license commences from the date of conviction or forfeiture of bail.

(6) If a person is convicted of a violation of 61-8-401 or 61-8-406 while operating a commercial motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-802."

**Section 3.** Section 61-8-401, MCA, is amended to read:

**"61-8-401. Driving under influence of alcohol or drugs.** (1) It is unlawful and punishable, as provided in 61-8-442, 61-8-714, and 61-8-731 through 61-8-734, for a person who is under the influence of:

(a) alcohol to drive or be in actual physical control of a vehicle upon the ways of this state open to the public;

(b) a dangerous drug to drive or be in actual physical control of a vehicle within this state;

(c) any other drug to drive or be in actual physical control of a vehicle within this state; or

(d) alcohol and any dangerous or other drug to drive or be in actual physical control of a vehicle within this state.

(2) The fact that any person charged with a violation of subsection (1) is or has been entitled to use alcohol or a drug under the laws of this state does not constitute a defense against any charge of violating subsection (1).

(3) "Under the influence" means that as a result of taking into the body alcohol, drugs, or any combination of alcohol and drugs, a person's ability to safely operate a vehicle has been diminished.

(4) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person driving or in actual physical control of a vehicle while under the influence of alcohol, the concentration of alcohol in the person at the time of a test, as shown by analysis of a sample of the person's blood or breath drawn or taken within a reasonable time after the alleged act, gives rise to the following inferences:

(a) If there was at that time an alcohol concentration of 0.04 or less, it may be inferred that the person was not under the influence of alcohol.

(b) If there was at that time an alcohol concentration in excess of 0.04 but less than ~~0.10~~ 0.08, that fact may not give rise to any inference that the person was or was not under the influence of alcohol, but the fact may be considered with other competent evidence in determining the guilt or innocence of the person.

(c) If there was at that time an alcohol concentration of ~~0.10~~ 0.08 or more, it may be inferred that the person was under the influence of alcohol. The inference is rebuttable.

(5) The provisions of subsection (4) do not limit the introduction of any other competent evidence bearing upon the issue of whether the person was under the influence of alcohol, drugs, or a combination of alcohol and drugs.

(6) Each municipality in this state is given authority to enact 61-8-406, 61-8-408, 61-8-410, 61-8-714, 61-8-722, 61-8-731 through 61-8-734, and subsections (1) through (5) of this section, with the word "state" in 61-8-406 and subsection (1) of this section changed to read "municipality", as an ordinance and is given jurisdiction of the enforcement of the ordinance and of the imposition of the fines and penalties provided in the ordinance.

(7) Absolute liability as provided in 45-2-104 will be imposed for a violation of this section."

**Section 4.** Section 61-8-406, MCA, is amended to read:

**"61-8-406. Operation of noncommercial vehicle by person with alcohol concentration of ~~0.10~~ 0.08 or more — operation of commercial vehicle by person with alcohol concentration of 0.04 or more.** (1) It is unlawful and punishable as provided in 61-8-442, 61-8-722, 61-8-723, and 61-8-731 through 61-8-734 for any person to drive or be in actual physical control of:

(a) a noncommercial vehicle upon the ways of this state open to the public while the person's alcohol concentration, as shown by analysis of the person's blood, breath, or urine, is ~~0.10~~ 0.08 or more; or

(b) a commercial motor vehicle upon the ways of this state open to the public while the person's alcohol concentration, as shown by analysis of the person's blood or breath, is 0.04 or more.

(2) Absolute liability, as provided in 45-2-104, will be imposed for a violation of this section."

**Section 5.** Section 61-8-442, MCA, is amended to read:

**“61-8-442. Driving under the influence of alcohol or drugs — driving with excessive alcohol concentration — ignition interlock device discretionary on first offense.** (1) In addition to the punishments provided in 61-8-714 and 61-8-722, regardless of disposition, the court may restrict a defendant to driving only a motor vehicle equipped with a functioning ignition interlock device and require the defendant to pay the reasonable cost of leasing, installing, and maintaining the device if:

(a) the court determines that approved ignition interlock devices are reasonably available;

(b) the defendant’s blood alcohol concentration at the time of the arrest was ~~0.18%~~ 0.16 or greater; and

(c) the defendant has not been previously convicted of a violation of 61-8-401 or 61-8-406.

(2) Any restriction imposed under this section must be included in a report of the conviction made by the court to the department in accordance with 61-11-101 and placed upon the person’s driving record maintained by the department in accordance with 61-11-102.

(3) The duration of a restriction imposed under this section must run parallel to the time period for suspension of the driver’s license of the defendant in accordance with 61-2-107, 61-5-205, and 61-5-208 and must be monitored by the department.”

**Section 6.** Section 61-11-203, MCA, is amended to read:

**“61-11-203. Definitions.** As used in this part, the following definitions apply:

(1) “Conviction” means a finding of guilt by duly constituted judicial authority, a plea of guilty or nolo contendere, or a forfeiture of bail, bond, or other security deposited to secure appearance by a person charged with having committed any offense relating to the use or operation of a motor vehicle that is prohibited by law, ordinance, or administrative order.

(2) “Driver in need of rehabilitation and improvement” means a person who within a 2-year period accumulates 18 or more conviction points according to the schedule specified in subsection (3).

(3) “Habitual traffic offender” means any person who within a 3-year period accumulates 30 or more conviction points according to the schedule specified in this subsection:

(a) deliberate homicide resulting from the operation of a motor vehicle, 15 points;

(b) mitigated deliberate homicide, negligent homicide resulting from operation of a motor vehicle, or negligent vehicular assault, 12 points;

(c) any offense punishable as a felony under the motor vehicle laws of Montana or any felony in the commission of which a motor vehicle is used, 12 points;

(d) driving while under the influence of intoxicating liquor or narcotics or drugs of any kind or operation of a motor vehicle by a person with alcohol concentration of ~~0.10~~ 0.08 or more, 10 points;

(e) operating a motor vehicle while the license to do so has been suspended or revoked, 6 points;

(f) failure of the driver of a motor vehicle involved in an accident resulting in death or injury to any person to stop at the scene of the accident and give the required information and assistance, as defined in 61-7-105, 8 points;

(g) willful failure of the driver involved in an accident resulting in property damage of \$250 to stop at the scene of the accident and give the required information or failure to otherwise report an accident in violation of the law, 4 points;

(h) reckless driving, 5 points;

(i) illegal drag racing or engaging in a speed contest in violation of the law, 5 points;

(j) any of the mandatory motor vehicle liability protection offenses under 61-6-301 and 61-6-302, 5 points;

(k) operating a motor vehicle without a license to do so, 2 points (this subsection (k) does not apply to operating a motor vehicle within a period of 180 days from the date the license expired);

(l) speeding, except as provided in 61-8-725(2), 3 points;

(m) all other moving violations, 2 points.

(4) There may not be multiple application of cumulative points when two or more charges are filed involving a single occurrence. If there are two or more convictions involving a single occurrence, only the number of points for the specific conviction carrying the highest points is chargeable against that defendant.

(5) "License" means any type of license or permit to operate a motor vehicle.

(6) "Moving violation" means a violation of a traffic regulation of this state or another jurisdiction by a person while operating a motor vehicle or in actual physical control of a motor vehicle upon a highway, as the term is defined in 61-1-201.

(7) A traffic regulation includes any provision governing motor vehicle operation, equipment, safety, size, weight, and load restrictions or driver licensing. A traffic regulation does not include provisions governing vehicle registration or local parking."

**Section 7. Code commissioner instruction.** The code commissioner is authorized and instructed to change "0.10" to "0.08" in any legislation enacted by the 2003 legislature that contains a reference to an alcohol concentration of 0.10 in a person's body.

**Section 8. Effective date.** [This act] is effective on passage and approval.

Approved April 15, 2003

## CHAPTER NO. 330

[SB 34]

AN ACT AUTHORIZING THE DEPARTMENT OF TRANSPORTATION TO IMPLEMENT AN EXPEDITED ACQUISITION PROCESS FOR ACQUIRING PROPERTY UNDER CERTAIN CONDITIONS; AMENDING SECTIONS

60-4-104, 70-30-302, AND 70-30-311, 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 60-4-104, MCA, is amended to read:

**“60-4-104. Exercise of right of eminent domain — presumption.** (1) *Subject to subsections (4) and (5), whenever ~~Whenever~~ the department cannot acquire lands or other property or interests in the lands or property at a price or cost ~~which~~ that it considers reasonable, it may direct the attorney general or any county attorney to procure the interests by proceedings to be instituted as provided in Title 70, chapter 30, against all nonaccepting landholders.*

(2) ~~It shall~~ *The department may not so direct the attorney general or any county attorney to procure the interests until it adopts an order declaring that:*

(a) public interest and necessity require the construction or completion by the state of the highway or improvement for one of the purposes set forth in 60-4-103;

(b) the interest described in the order and sought to be condemned is necessary for the highway or improvement;

(c) the highway or improvement is planned and located in a manner ~~which~~ that will be compatible with the greatest public good and the least private injury.

(3) The order creates and establishes a disputable presumption:

(a) of the public necessity of the proposed highway or improvement;

(b) that the taking of the interest sought is necessary ~~therefor~~ for the project;

(c) that the proposed highway or improvement is planned or located in a manner ~~which~~ that will be most compatible with the greatest public good and the least private injury.

(4) (a) *Once the department has acquired at least three-fourths of all the parcels needed to construct a project that has been selected by the commission, it may use the procedures outlined in subsection (5) and this subsection (4) to acquire the remaining parcels required for the project.*

(b) *Not less than 30 days or more than 45 days after service of the summons and complaint provided for in 70-30-203, the department shall deposit into an account and in the manner provided for in 70-30-302 the estimated fair market value of the property that is to be acquired and that is described in the complaint. Once the funds are deposited, the department may request, by motion filed with the court, an order to show cause why the property should not be placed in the possession of the department as requested in the complaint.*

(5) (a) *If the condemnee does not file an objection to the motion within 10 days, the court shall issue the preliminary condemnation order as provided in 70-30-206 and place the condemnor in possession of the property as provided in 70-30-311.*

(b) *If the condemnee files an objection to the motion, the court shall schedule a hearing at which the condemnee shall appear and show cause why the property should not be placed in the possession of the department as requested in the complaint. The hearing must take place not less than 20 days or more than 30 days after the objection is filed. The court shall rule on the condemnor's motion as*

soon after the hearing as possible. However, the time between the hearing and the court's decision may not exceed 30 days.

(c) *The motion shall include a notice specifying that the order sought is a final order on the issue of possession of the property described in the complaint.*"

**Section 2.** Section 70-30-302, MCA, is amended to read:

**"70-30-302. Assessing compensation — date and measure — interest.**

(1) For the purpose of assessing compensation, the right to compensation is considered to have accrued at the date of the service of the summons, and the property's current fair market value as of that date is the measure of compensation for all property to be actually taken and the basis of depreciation in the current fair market value of property not actually taken but injuriously affected. This subsection may not be construed to limit the amount of compensation payable by the department of transportation under the provisions of any legislation enacted pursuant to the federal Highway Beautification Act of 1965.

(2) If an order is made allowing the condemnor to take possession, as provided in 60-4-104(4) and (5) and 70-30-311, the full amount finally awarded must draw interest at the rate of 10% a year from the date of the service of the summons to the earlier of the following dates:

(a) the date on which the right to appeal to the Montana supreme court expires or, if an appeal is filed, the date of final decision by the supreme court; or

(b) the date on which the condemnee withdraws from the court the full amount finally awarded.

(3) If the condemnee withdraws from the court a fraction of the amount finally awarded, interest on that fraction ceases on the date it is withdrawn but interest on the remainder of the amount finally awarded continues to the earlier of the dates referred to in subsections (2)(a) and (2)(b) until the full amount is withdrawn from the court.

(4) None of the amount finally awarded draws interest after the date on which the right to appeal to the Montana supreme court expires.

(5) Improvements put upon the property subsequent to the date of the service of summons may not be included in the assessment of compensation or depreciation in current fair market value and may not be used as the basis of computing compensation or depreciation."

**Section 3.** Section 70-30-311, MCA, is amended to read:

**"70-30-311. Putting condemnor in possession.** (1) At any time after the filing of the preliminary condemnation order pursuant to 70-30-206 or an order as provided in 60-4-104(4) and (5) and while it retains jurisdiction, the court upon application of the condemnor may make an order that:

(a) upon payment into court of the amount of compensation claimed by the condemnee in the condemnee's statement of claim of just compensation under 70-30-207 or the amount assessed either by the commissioners or by the jury, the condemnor is authorized:

~~(a)~~(i) if already in possession of the property of the condemnee that is sought to be taken, to continue in possession; or

~~(b)~~(ii) if not in possession, to take possession of the property and use and possess the property during the pendency and until the final conclusion of the proceedings and litigation; and ~~that~~



(b) all actions and proceedings against the condemnor on account of the possession are stayed until ~~that time~~ *the final conclusion of the proceedings and litigation.*

(2) If the condemnee fails to file a statement of claim of just compensation within the time specified in 70-30-207, the condemnor may obtain an order for possession provided for in subsection (1), subject to the condition subsequent that a condemnor's payment into court must be made within 10 days of receipt of the condemnee's statement of claim.

(3) However, when an appeal is taken by the condemnee, the court may require the condemnor before continuing or taking possession, in addition to paying into court the amount assessed, to give a bond or undertaking with sufficient sureties approved by the court and in an amount that the court may direct, conditioned to pay the condemnee any additional damages and costs above the amount assessed, which is finally determined as the amount that the condemnee is entitled to for the taking of the property, and all damages that the condemnee may sustain if for any cause the property is not finally taken for public use.

(4) The amount assessed by the commissioners or by the jury on appeal is considered, for the purposes of this section and until reassessed or changed in the further proceedings, as just compensation for the property taken. However, the condemnor, by payment into court of the amount claimed in the answer or the amount assessed or by giving security as provided in subsection (3), may not be prevented from appealing from the assessment but may appeal in the same manner and with the same effect as if money had not been deposited or security had not been given.

(5) (a) Subject to subsection (5)(b), in all cases in which the condemnor deposits the amount of the assessment and continues in possession or takes possession of the property, as provided in this section, the condemnee, if there is no dispute as to the ownership of the property, may at any time demand and receive upon order of the court all or any part of the money deposited. The demand or receipt may not preclude the condemnee's right of appeal from the assessment. However, if the amount of the assessment is finally reduced on appeal by either party, the condemnee who has received all or any part of the amount deposited is liable to the condemnor for any excess of the amount received over the amount finally assessed, with legal interest on the excess from the time the condemnee received the money deposited. The excess, plus interest, may be recovered by a civil action. Upon any appeal from an assessment by the commissioners to a jury, the jury may make a finding for any amount that it considers appropriate.

(b) The court may not order the delivery to any condemnee of more than 75% of the money deposited on the condemnee's account except upon posting of bond by the condemnee equal to the amount in excess of 75%, with sureties to be approved by the court, to repay to the condemnor amounts withdrawn that are in excess of the condemnee's final award in the proceedings."

**Section 4. Effective date.** [This act] is effective on passage and approval.

**Section 5. Applicability.** [This act] applies to actions initiated on or after [the effective date of this act].

Approved April 15, 2003

**CHAPTER NO. 331**

[SB 80]

AN ACT PROHIBITING A LEGISLATIVE STANDING COMMITTEE FROM MEETING DURING THE INTERIM BETWEEN REGULAR LEGISLATIVE SESSIONS, EXCEPT IN CONJUNCTION WITH A SPECIAL SESSION OR TO PERFORM CERTAIN TASKS BEFORE A REGULAR SESSION.

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

**Section 1. Authority for standing committees to meet during interim.** (1) Except as provided in 5-2-202 and subsection (2) of this section, a standing committee of the legislature, as provided for in legislative rules, may not meet during the interim between regular legislative sessions.

(2) Upon approval of the president of the senate or the speaker of the house of representatives, a standing committee may meet before a special session, as provided in 5-3-101, or during a special session.

Approved April 15, 2003

**CHAPTER NO. 332**

[SB 86]

AN ACT REVISING ACCOUNTING, BUDGETING, AND APPROPRIATION LAWS; AUTHORIZING STATE SPECIAL AND OTHER FEDERAL FUND SWITCHES; CHANGING THE DATE FOR STATE AGENCIES TO ANNUALLY REPORT ACCOUNTING INFORMATION TO THE LEGISLATIVE FINANCE COMMITTEE; CLARIFYING THE CALCULATION OF BALANCED FINANCIAL PLANS THAT REDUCE THE PROPOSED BASE BUDGET FOR AGENCIES WITH MORE THAN 20 FTE; PROVIDING BUDGET AMENDMENT EXCEPTIONS FOR STATE SPECIAL REVENUE; AMENDING SECTIONS 17-2-108, 17-2-304, 17-7-111, AND 17-7-402, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 17-2-108, MCA, is amended to read:

**“17-2-108. Expenditure of nongeneral fund money first.** (1) Except for the exemptions applicable to the Montana historical society in 22-3-114(5) and the Montana state library in 22-1-226(5), an office or entity of the executive, legislative, or judicial branch of state government shall apply expenditures against appropriated nongeneral fund money whenever possible before using general fund appropriations.

(2) The approving authority, as defined in 17-7-102, shall authorize the decrease of the general fund appropriation of an agency by the amount of money received from federal sources in excess of the appropriation in an appropriation act unless the decrease is contrary to federal law, federal rule, or a contract or unless the approving authority certifies that the services to be funded by the additional money are significantly different than those for which the agency received the general fund appropriation. If directed by an appropriation act, the approving authority shall decrease the general fund appropriation of an agency by the amount of money received from nonfederal sources in excess of the appropriation unless the decrease is contrary to state law, state rule, or a

contract or unless the approving authority certifies that the services to be funded by the additional money are significantly different than those for which the agency received the general fund appropriation. If the general fund appropriation of an agency is decreased pursuant to this section, the appropriation for the fund in which the money is received is increased in the amount of the general fund decrease.

*(3) If directed by an appropriation act, the approving authority may decrease a state special revenue, proprietary, or other funds appropriation of an agency by the amount of money received from federal sources in excess of the appropriation unless the decrease is contrary to state or federal law or federal rule. The appropriation for the fund in which the money is received is decreased by the amount of the federal special revenue increase allowed by law, rule, or contract and approved for the purpose.”*

**Section 2.** Section 17-2-304, MCA, is amended to read:

**“17-2-304. Reports required.** (1) The approving authority for a state agency shall annually report in writing to the legislative finance committee by ~~August 1~~ **September 15:**

(a) each state agency that had a cash balance in a state charge for services fund contrary to the limitation provided in 17-2-302(1) during the previous 12 months;

(b) the facts certified for each state agency by the approving authority pursuant to 17-2-302(2);

(c) each state agency that has complied with the requirements of 17-2-303 and the circumstances of the agency’s compliance; and

(d) each state agency that has not complied with 17-2-303 and the circumstances of the agency’s noncompliance.

(2) The director of the department of administration shall report to the legislature at the time and in the manner required by 5-11-210 a list of each local government entity that had a balance in a local charge for services fund contrary to the limitation provided by 17-2-302(1) or that failed to reduce the charge as provided in 17-2-303, or both, during the previous 12 months.”

**Section 3.** Section 17-7-111, MCA, is amended to read:

**“17-7-111. Preparation of state budget — agency program budgets — form distribution and contents.** (1) (a) To prepare a state budget, the executive branch, the legislature, and the citizens of the state need information that is consistent and accurate. Necessary information includes detailed disbursements by fund type for each agency and program for the appropriate time period, recommendations for creating a balanced budget, and recommended disbursements and estimated receipts by fund type and fund category.

(b) Subject to the requirements of this chapter, the budget director and the legislative fiscal analyst shall by agreement:

(i) establish necessary standards, formats, and other matters necessary to share information between the agencies and to ensure that information is consistent and accurate for the preparation of the state’s budget; and

(ii) provide for the collection and provision of budgetary and financial information that is in addition to or different from the information otherwise required to be provided pursuant to this section.

(2) In the preparation of a state budget, the budget director shall, not later than the date specified in 17-7-112(1), distribute to all agencies the proper forms and instructions necessary for the preparation of budget estimates by the budget director. These forms must be prescribed by the budget director to procure the information required by subsection (3). The forms must be submitted to the budget director by the date provided in 17-7-112(2)(a) or the agency's budget is subject to preparation based upon estimates as provided in 17-7-112(5). The budget director may refuse to accept forms that do not comply with the provisions of this section or the instructions given for completing the forms.

(3) The agency budget request must set forth a balanced financial plan for the agency completing the forms for each fiscal year of the ensuing biennium. The plan must consist of:

(a) a consolidated agency budget summary of funds subject to appropriation or enterprise funds that transfer profits to the general fund or to an account subject to appropriation for the current base budget expenditures, including statutory appropriations, and for each present law adjustment and new proposal request setting forth the aggregate figures of the full-time equivalent personnel positions (FTE) and the budget, showing a balance between the total proposed disbursements and the total anticipated receipts, together with the other means of financing the budget for each fiscal year of the ensuing biennium, contrasted with the corresponding figures for the last completed fiscal year and the fiscal year in progress;

(b) a schedule of the actual and projected receipts, disbursements, and solvency of each fund for the current biennium and estimated for the subsequent biennium;

(c) a statement of the agency mission and a statement of goals and objectives for each program of the agency. The goals and objectives must include, in a concise form, sufficient specific information and quantifiable information to enable the legislature to formulate an appropriations policy regarding the agency and its programs and to allow a determination, at some future date, on whether the agency has succeeded in attaining its goals and objectives.

(d) actual FTE and disbursements for the completed fiscal year of the current biennium, estimated FTE and disbursements for the current fiscal year, and the agency's request for the ensuing biennium, by program;

(e) actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and the agency's recommendations for the ensuing biennium, by disbursement category;

(f) for only agencies with more than 20 FTE, a plan to reduce the proposed base budget for the general appropriations act and the proposed state pay plan to 95% of the current base budget or lower if directed by the budget director. Each agency plan must include base budget reductions that reflect the required percentage reduction by fund type for the general fund and state special revenue fund types. *Exempt from the calculations of the 5% target amounts are legislative audit costs, administratively attached entities that hire their own staff under 2-15-121, and state special revenue accounts that do not transfer their investment earnings or fund balances to the general fund.* The plan must include:

(i) a prioritized list of services that would be eliminated or reduced;

(ii) for each service included in the prioritized list, the savings that would result from the elimination or reduction; and

(iii) the consequences or impacts of the proposed elimination or reduction of each service.

(g) a reference for each new information technology proposal stating whether the new proposal is included in the approved agency information technology plan as required in 2-17-523; and

(h) other information the budget director feels is necessary for the preparation of a budget.

(4) The budget director shall prepare and submit to the legislative fiscal analyst in accordance with 17-7-112:

(a) detailed recommendations for the state long-range building program. Each recommendation must be presented by institution, agency, or branch, by funding source, with a description of each proposed project.

(b) a statewide summary of recommendations for information technology projects and new initiatives. Each recommendation must be presented by institution, agency, or branch and by funding source, and recommendations for major new information technology projects must contain the information identified in 2-17-526.

(c) the proposed pay plan schedule for all executive branch employees at the program level by fund, with the specific cost and funding recommendations for each agency. Submission of a pay plan schedule under this subsection is not an unfair labor practice under 39-31-401.

(d) agency proposals for the use of cultural and aesthetic project grants under Title 22, chapter 2, part 3, the renewable resource grant and loan program under Title 85, chapter 1, part 6, the reclamation and development grants program under Title 90, chapter 2, part 11, and the treasure state endowment program under Title 90, chapter 6, part 7.

(5) The board of regents shall submit, with its budget request for each university unit in accordance with 17-7-112, a report on the university system bonded indebtedness and related finances as provided in this subsection (5). The report must include the following information for each year of the biennium, contrasted with the same information for the last completed fiscal year and the fiscal year in progress:

(a) a schedule of estimated total bonded indebtedness for each university unit by bond indenture;

(b) a schedule of estimated revenue, expenditures, and fund balances by fiscal year for each outstanding bond indenture, clearly delineating the accounts relating to each indenture and the minimum legal funding requirements for each bond indenture; and

(c) a schedule showing the total funds available from each bond indenture and its associated accounts, with a list of commitments and planned expenditures from such accounts, itemized by revenue source and project for each year of the current and ensuing bienniums.

(6) The budget director may not obtain copies of individual income tax records protected under 15-30-303. The department of revenue shall make individual income tax data available by removing names, addresses, occupations, social security numbers, and taxpayer identification numbers. The

department of revenue may not alter the data in any other way. The data is subject to the same restrictions on disclosure as are individual income tax returns.”

**Section 4.** Section 17-7-402, MCA, is amended to read:

**“17-7-402. Budget amendment requirements.** (1) Except as provided in subsection (7), a budget amendment may not be approved:

(a) by the approving authority, except a budget amendment to spend:

(i) additional federal revenue;

(ii) additional tuition collected by the Montana university system;

(iii) additional revenue deposited in the internal service funds within the department or the office of the commissioner of higher education as a result of increased service demands by state agencies;

(iv) Montana historical society enterprise revenue resulting from sales to the public;

(v) additional revenue that is deposited in funds other than the general fund and that is from the sale of fuel for those agencies participating in the Montana public vehicle fueling program established by Executive Order 22-91;

(vi) revenue resulting from the sale of goods produced or manufactured by the industries program of an institution within the department of corrections;~~or~~

(vii) revenue collected for the administration of the state grain laboratory under the provisions of Title 80, chapter 4, part 7;

(viii) *revenue collected for the Water Pollution Control State Revolving Fund Act under the provisions of Title 75, chapter 5, part 11;*

(ix) *revenue collected for the Drinking Water State Revolving Fund Act under the provisions of Title 75, chapter 6, part 2; or*

(x) *state special revenue adjustments required to allocate costs for leave or terminal leave within an agency in accordance with federal circular A-87;*

(b) by the approving authority if the budget amendment contains any significant ascertainable commitment for any present or future increased general fund support;

(c) by the approving authority for the expenditure of money in the state special revenue fund unless an emergency justifies the expenditure or the expenditure is exempt under subsection (5);

(d) by the approving authority unless it will provide additional services;

(e) by the approving authority for any matter of which the requesting agency had knowledge at a time when the proposal could have been presented to an appropriation subcommittee, the house appropriations committee, or the senate finance and claims committee of the most recent legislative session open to that matter, except when the legislative finance committee is given specific notice by the approving authority that significant identifiable events, specific to Montana and pursuant to provisions or requirements of Montana state law, have occurred since the matter was raised with or presented for consideration by the legislature; or

(f) to extend beyond June 30 of the last year of any biennium, except that budget amendments for federal funds may extend to the end of the federal fiscal year.

(2) A general fund loan made pursuant to 17-2-107 does not constitute a significant ascertainable commitment of present general fund support.

(3) Subject to subsection (1)(f), all budget amendments must itemize planned expenditures by fiscal year.

(4) Each budget amendment must be submitted by the approving authority to the budget director and the legislative fiscal analyst.

(5) Money from nonstate or nonfederal sources that would be deposited in the state special revenue fund and that is restricted by law or by the terms of a written agreement, such as a contract, trust agreement, or donation, is exempt from the requirements of this part.

(6) An appropriation for a nonrecurring item that would usually be the subject of a budget amendment must be submitted to the legislature for approval during a legislative session between January 1 and the senate hearing on the budget amendment bill. The bill may include authority to spend money in the current fiscal year and in both fiscal years of the next biennium.

(7) A budget amendment to spend state funds, other than from the general fund, required for matching funds in order to receive a grant is exempt from the provisions of subsection (1)."

**Section 5. Effective date.** [This act] is effective July 1, 2003.

Approved April 15, 2003

## CHAPTER NO. 333

[SB 166]

AN ACT REVISING THE PADDLEFISH ROE DONATION PROGRAM; REVISING THE RESTRICTION THAT ONLY ROE FROM PADDLEFISH CAUGHT BETWEEN THE BURLINGTON NORTHERN RAILROAD BRIDGE AT GLENDIVE TO THE CONFLUENCE OF COTTONWOOD CREEK AND THE YELLOWSTONE RIVER IS ELIGIBLE FOR DONATION TO THE PROGRAM BY SPECIFYING A LONGER SECTION OF THE YELLOWSTONE RIVER; ADJUSTING THE PERCENTAGES OF PROGRAM PROCEEDS THAT ARE DIVIDED BETWEEN THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS AND THE NONPROFIT ORGANIZATION THAT PROCESSES AND MARKETS THE CAVIAR; EXTENDING THE PADDLEFISH ROE DONATION PROGRAM UNTIL JUNE 30, 2018; AMENDING SECTION 87-4-601, MCA, SECTION 5, CHAPTER 409, LAWS OF 1989, AND SECTION 2, CHAPTER 196, LAWS OF 1993; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*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. (Temporary) Sale of fish or spawn unlawful — exceptions.**

(1) Except as provided in subsections (2) and (3), a person may not, for speculative purposes, for market, or for sale, in any way, catch any of the fish ~~which that~~ in this title are classified as game fish or remove or cause to be removed the eggs or spawn of any ~~such~~ game fish. ~~No~~ A person may not sell or offer for sale any of the game fish of this state as defined in this title or the eggs or spawn from any game fish.

(2) The restrictions of subsection (1) do not apply to:

- (a) the catching of fish in private ponds by the owners of private ponds;
- (b) the taking of fish by state authorities for the purpose of obtaining eggs for propagation in state fish hatcheries or by any person who receives a permit from the department to take eggs for propagation purposes;
- (c) the catching of whitefish by the holder of a valid fishing license fishing with hook and line or rod in specified waters designated by rules and regulations of the department;
- (d) the taking of whitefish by nets or traps in the Kootenai River and in its tributary streams within 1 mile of the Kootenai River, under rules and regulations as the fish, wildlife, and parks commission may prescribe; or
- (e) the sale by the department of fish eggs produced from brood stock owned by the department but determined to be in excess of the department's needs.

(3) (a) ~~A~~ *Until June 30, 2018*, 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 ~~confluence of Cottonwood Creek and the Yellowstone River~~ *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 (3)(b) 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.

(b) 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.

(c) The department may enter into an agreement with the organization selected pursuant to the rules provided for in subsection (3)(b) 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.

(d) (i) ~~Forty~~ *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.

(ii) ~~Sixty~~ *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 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 (3)(b), two area local government representatives, and two representatives of area ~~sportsmen~~ *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. (Terminates June 30, 2003 — sec. 2, Ch. 196, L. 1993.)

~~**87-4-601. (Effective July 1, 2003) Sale of fish or spawn unlawful — exceptions.** (1) Except as provided in subsection (2), no person may, for speculative purposes, for market, or for sale, in any way, catch any of the fish which in this title are classified as game fish or remove or cause to be removed the eggs or spawn of any such fish. No person may sell or offer for sale any of the game fish of this state as defined in this title or the eggs or spawn therefrom.~~

~~(2) The restrictions of subsection (1) do not apply to:~~

~~(a) the catching of fish in private ponds by the owners thereof;~~

~~(b) the taking of fish by state authorities for the purpose of obtaining eggs for propagation in state fish hatcheries or by any person who receives a permit from the department to take eggs for such purposes;~~

~~(c) the catching of whitefish by the holder of a valid fishing license fishing with hook and line or rod in specified waters designated by rules and regulations of the department;~~

~~(d) the taking of whitefish by nets or traps in the Kootenai River and in its tributary streams within 1 mile of the Kootenai River, under such rules and regulations as the fish, wildlife, and parks commission may prescribe; or~~

~~(e) the sale by the department of fish eggs produced from brood stock owned by the department but determined to be in excess of the department's needs."~~

**Section 2.** Section 5, Chapter 409, Laws of 1989, is amended to read:

"Section 5. **Effective date — termination.** [This act] is effective July 1, 1989, and terminates June 30, 1993."

**Section 3.** Section 2, Chapter 196, Laws of 1993, is amended to read:

"Section 2. Section 5, Chapter 409, Laws of 1989, is amended to read:

"Section 5. **Effective date — termination.** [This act] is effective July 1, 1989, and terminates June 30, 1993-2003."

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved April 15, 2003

## CHAPTER NO. 334

[SB 168]

AN ACT REQUIRING THAT MUNICIPALITIES ANNEX ROADS AND STREETS THAT ARE ADJACENT TO PROPERTY THAT IS BEING ANNEXED.

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

**Section 1. Inclusion of roads and rights-of-way in annexation.** In all instances of annexation allowed under parts 42 through 47 of this chapter, the municipality shall include the full width of any public streets or roads, including the rights-of-way, that are adjacent to the property being annexed.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 7, chapter 2, part 42, and the provisions of Title 7, chapter 2, part 42, apply to [section 1].

Approved April 15, 2003

## CHAPTER NO. 335

[SB 241]

AN ACT DEFINING "DEALER", "MOTOR VEHICLE", AND "NEW MOTOR VEHICLE" FOR THE PURPOSES OF SECTIONS 61-4-131 THROUGH 61-4-137, 61-4-141, AND 61-4-150, MCA, IN ORDER TO PROVIDE THAT THE RIGHT OF A DESIGNATED FAMILY MEMBER TO SUCCEED IN THE OWNERSHIP OR OPERATION OF A NEW MOTOR VEHICLE DEALERSHIP INCLUDES PERSONAL WATERCRAFT, SNOWMOBILE, AND OFF-HIGHWAY VEHICLES AND IN ORDER TO PROVIDE THAT A MANUFACTURER'S RIGHT OF FIRST REFUSAL AND A DEALER'S RIGHTS WITH RESPECT TO THE SALE, TRANSFER, OR EXCHANGE OF A DEALERSHIP APPLY TO PERSONAL WATERCRAFT, SNOWMOBILE, AND OFF-HIGHWAY VEHICLES; AND AMENDING SECTION 61-4-131, MCA.

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

**Section 1.** Section 61-4-131, MCA, is amended to read:

**"61-4-131. Definitions.** As used in 61-4-131 through 61-4-137, 61-4-141, and 61-4-150, the following definitions apply:

(1) "Dealer" includes a new motor vehicle dealer as defined in 61-4-201.

(2) (a) ~~designated~~ "Designated family member" means the spouse, child, grandchild, parent, brother, or sister of a dealer 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) who has otherwise been designated in writing by a deceased dealer to succeed the deceased in the motor vehicle dealership; or

(ii) ~~under the laws of intestate succession of this state or who,~~ 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.

(3) "Motor vehicle" has the same meaning as provided in 61-4-201.

(4) "New motor vehicle" has the same meaning as provided in 61-4-201."

Approved April 15, 2003

**CHAPTER NO. 336**

[SB 262]

AN ACT CLARIFYING APPOINTMENT BY COUNTY COMMISSIONERS TO A VACANCY IN THE LEGISLATURE; CLARIFYING THE ROLE OF THE COUNTY CENTRAL COMMITTEE; REVISING THE TIMEFRAME FOR NOTIFICATIONS AND APPOINTMENT; CLARIFYING THE BEGINNING OF A TERM OF OFFICE FILLED BY AN APPOINTMENT; ALLOWING AN APPOINTMENT PRIOR TO AN ELECTION IF A SPECIAL LEGISLATIVE SESSION IS CALLED; AMENDING SECTIONS 5-2-402, 5-2-403, 5-2-404, 5-2-406, AND 5-2-407, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 5-2-402, MCA, is amended to read:

**“5-2-402. Appointment by board of county commissioners — county central committee role — timeframes.** (1) ~~When~~ *Except as provided in subsection (5) or as otherwise provided by law, whenever* a vacancy occurs in the legislature, the vacancy ~~shall~~ *must* be filled by appointment by the board of county commissioners or, in the event of a multicounty district, the boards of county commissioners *of the counties* comprising the district sitting as one appointing board.

(2) (a) *Whenever a vacancy is within a single county, the board of county commissioners shall make the appointment as described in 5-2-403, 5-2-404, or 5-2-406.*

~~(2)(b)~~ *Whenever a vacancy is within a multicounty district, the boards of county commissioners shall sit as one appointing board. The selection of an individual to fill the vacancy must be as follows:*

~~(a)(i)~~ *The chairman presiding officer of the board of county commissioners of the county in which the person resided whose vacancy is to be filled shall call a meeting for the purpose of appointing the member of the legislature, and he shall act as the presiding officer of preside at the meeting.*

~~(b)(ii)~~ *Each commissioner's vote is determined by the following formula: 100 multiplied by (A divided by B) multiplied by (1 divided by C), where:*

(A) *A is the total votes cast in the respective county for the person vacating the legislative seat or, if such the vacating person was not himself elected, the votes cast for the last person to be elected for the current term;*

(B) *B is the total votes cast for that person in the legislative district;* and

(C) *C is the number of authorized commissioners on the board of the commissioner whose vote is being determined.*

*(iii) The person selected to fill the vacancy is the one who receives the highest number above 50 that results from the calculation in subsection (2)(b)(ii). If none of the candidates receives a number higher than 50 from that calculation, the selection board shall cast its votes again in the same manner for the persons receiving the two highest numbers. If neither vote results in a candidate receiving a number higher than 50 from the calculation provided in subsection (2)(b)(ii), then 5-2-404 applies.*

(c) *If a vacancy occurs in a holdover senate seat after holdover senators have been assigned to new districts under each reapportionment, the formula in*

*subsection (2)(b)(ii) must be applied using the votes cast for the senatorial candidates at the last election in which such votes were cast for a senate candidate. Such Only the number of votes shall include only those cast by electors residing in the new senate district for senate candidates of the party to which the person vacating the seat belonged may be counted. The secretary of state shall provide an estimate of the number of votes so cast; for each party by county or portion thereof of a county. The selection process is the same as provided in subsection (2)(b)(iii).*

~~(c) The person selected to fill the vacancy is the one who receives the highest number above 50 that results from the calculation required by this subsection (2). If no candidate receives a number higher than 50 from that calculation, the selection board shall cast its votes again in the same manner for the persons receiving the two highest numbers.~~

(3) ~~The appointment of a legislator process to fill a vacant legislative seat under this section must take place within 15 days after the vacancy occurs. is as follows:~~

(a) *Within 7 days of being notified of a vacancy as described in 2-16-501, the secretary of state shall notify the board of county commissioners and the county central committee of the county where the vacating legislator is a resident, if the legislative seat is within one county, or the boards of county commissioners and the corresponding county central committees if the legislative seat is in a multicounty district. If the legislator is an independent or belongs to a party for which there is no county central committee, the notification of county commissioners suffices.*

(b) *The county central committee or committees, upon receipt of notification of a vacancy, have 45 days to propose a list of prospective appointees, pursuant to 5-2-403(1). The county central committee or the county central committees, acting together, shall forward the list of names to the appointing board within the 45 days.*

(c) *The appointing board shall make and confirm an appointment and notify the secretary of state within 15 days:*

(i) *after receiving the list of prospective appointees from the county central committee or committees;*

(ii) *after 45 days have expired after the notification of vacancy if the county central committee or committees have not provided a list of prospective appointees; or*

(iii) *after notification of a vacancy if the legislator vacating the seat is an independent.*

(4) *If the legislature is in session, the notification process in subsection (3)(a) must be followed within 5 days. The process described in subsection (3)(b) must take place in 5 days. The process described in subsection (3)(c) must take place in 5 days.*

(5) *Notwithstanding subsection (6), if a vacancy occurs prior to a primary election, 13-10-326 applies. If a vacancy occurs after a primary and prior to a general election, 13-10-327 applies.*

(6) *If the legislature is called into special session within 85 days of a general election, a person must be appointed to fill a legislative vacancy pursuant to subsections (1) through (4)."*

**Section 2.** Section 5-2-403, MCA, is amended to read:

**“5-2-403. Appointee to be of same political party.** (1) Whenever ~~his~~ *an appointee's* predecessor served as a member of a political party, the appointee named under 5-2-402 ~~shall~~ *must* be a member of the same political party and ~~shall~~ *must* be selected from a list of three individuals provided:

(a) by the *county central committee in a district within a single county; or*

(b) by the county central committees, acting together, *in a multicounty district, as described in 5-2-402 of the counties wherein a portion of the senate district lies.*

(2) Whenever the appointing board is unable to elect an appointee from the submitted list, ~~the appointing board~~ *shall* request a second list of three names from the county central *committee or* committees. The second list may not contain any of the names submitted on the first list. The appointing board shall then select an appointee from the individuals named on both lists.

~~(2)(3)~~ The provisions of this section do not apply if ~~his~~ *the* predecessor served as an independent.”

**Section 3.** Section 5-2-404, MCA, is amended to read:

**“5-2-404. Procedure upon failure of one candidate to receive majority vote.** In the event that a decision cannot be made by the appointing board because of failure of any candidate to receive a majority of the votes, the final decision may be made by lot from the first and second lists of candidates as provided by 5-2-403~~(1)~~ or from a list of three individuals if the predecessor served as an independent, in accordance with rules of selection adopted by the appointing board.”

**Section 4.** Section 5-2-406, MCA, is amended to read:

**“5-2-406. Elections to fill vacancies in senate.** (1) Whenever a vacancy occurs 85 days or more before the general election held during the second year of the term, an individual *may be appointed, pursuant to 5-2-402, if the legislature is called into special session. However, the appointment may run only until a person shall be* is elected to complete the term at ~~that~~ *the upcoming* general election *and sworn into office.* The election procedure to be used to elect the successor is as follows:

(a) Whenever the vacancy occurs 75 days or more prior to the primary election during the second year, the same procedure as is used for senators who will be elected to full 4-year terms at that general election ~~shall~~ *must* be utilized.

(b) Whenever the vacancy occurs on or after the 75th day prior to the primary election, any political party desiring to enter a candidate in the general election shall select a candidate as provided in 13-10-327 and 13-38-204. A political party shall notify the secretary of state of the party nominee. A person desiring to be a candidate as an independent shall follow the procedures provided in 13-10-501 and 13-10-502. The petition for an independent candidate ~~shall~~ *must* be filed with the secretary of state on or before the 85th day prior to the general election.

(2) Whenever a vacancy occurs on or after the 85th day prior to the general election held during the second year of the term, the person appointed by the board under 5-2-402 shall serve until the end of the term.”

**Section 5.** Section 5-2-407, MCA, is amended to read:

**“5-2-407. Anticipated vacancy.** (1) Whenever it appears that a vacancy will exist in the legislature because of the inability of an elected legislator to take

office at the commencement of the term to which ~~he~~ *the legislator* was elected, an appointee may be selected in advance of the commencement of the term under the provisions of 5-2-402 through 5-2-406.

(2) For purposes of determining the term of office of the appointee ~~and the 15-day period of 5-2-402(3), the vacancy term of office occurs~~ *commences on the first day of the term to which his predecessor was elected on which the appointee takes the oath of office.*

~~(3) An appointee under this section may take office only if the vacancy in fact exists at the commencement of the term of office.~~

*(3) An appointee under this section may take office only if the vacancy in fact exists at the commencement of the term of office."*

**Section 6. Effective date.** [This act] is effective on passage and approval.

Approved April 15, 2003

## CHAPTER NO. 337

[SB 315]

AN ACT PROVIDING FOR A FEASIBILITY STUDY TO ASSESS CONDITIONS AFFECTING RAIL FREIGHT COMPETITION IN MONTANA AND TO ANALYZE POSSIBILITIES TO IMPROVE RAIL FREIGHT COMPETITION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, 63 Class I freight railroads competed in the United States in 1976 and today only 8 Class I railroads traverse this country with limited competition and the control of more than 91% of all U.S. rail freight revenue; and

WHEREAS, in 2001 one railroad posted more than 97% of revenue earned in Montana from rail freight movement in and out of the state, as reported to the Public Service Commission; and

WHEREAS, railroads have seen an overall dwindling of their customer base in part because of business decisions linked to competition from other freight transporters; and

WHEREAS, three of Montana's major industries ship bulk quantities of mining, timber, and agricultural products out of state to compete in regional, national, and world markets against products on which pricing may benefit from lower variable costs in part because of competition in freight rates; and

WHEREAS, the Legislature considers greater understanding of the economic benefits of rail freight competition and the barriers to rail freight competition to be a key step forward in finding ways to promote economic development of Montana.

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

**Section 1. Feasibility study on rail freight competition.** (1) The office of economic development, established in 2-15-218, shall, subject to subsection (3), present a report to the 59th legislature, as provided in 5-11-210, concerning the status of rail freight competition and its impacts on economic development in Montana. The feasibility study must address:

(a) impacts in Montana from rail freight competition or lack of competition, including if possible a list of businesses that decided for or against locating in the state as a result of the existence of or lack of rail freight competition;

(b) benchmarks as provided through a comparison of rail freight rates and competition in the region;

(c) an analysis of the benefits of rail freight competition on economic development in Montana;

(d) an analysis of the potential for public or private investment in improved rail freight competition;

(e) proposals for various methods to improve rail freight competition in areas where competition is nonexistent or minimal and an analysis of each method's feasibility; and

(f) analysis of the costs and the benefits of state-owned infrastructure compared with privately owned infrastructure associated with additional rail lines intended to promote greater rail freight competition.

(2) The office of economic development may convene a task force of economists, members of the transportation industry, members of natural resource industries that use various forms of freight transportation to ship products to market, and experts in related fields to provide guidelines for the feasibility study.

(3) The office of economic development shall secure funding from federal and private sources to cover the costs of the feasibility study. If funding is insufficient, the requirements for the study are void.

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

Approved April 15, 2003

## CHAPTER NO. 338

[SB 316]

AN ACT CLARIFYING ENERGY-RELATED TAX LAWS BY PROVIDING THAT THE DEPARTMENT OF REVENUE MAY REFER CLAIMS FOR DEDUCTIONS OR CREDITS FOR ENERGY CONSERVATION MEASURES TO THE DEPARTMENT OF LABOR AND INDUSTRY RATHER THAN THE DEPARTMENT OF ADMINISTRATION; CLARIFYING THAT THE MINERAL EXPLORATION INCENTIVE CREDIT MAY NOT EXCEED A TOTAL OF \$20 MILLION FOR ALL EXPLORATION ACTIVITIES; AND AMENDING SECTIONS 15-32-106, 15-32-503, AND 15-32-507, MCA.

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

**Section 1.** Section 15-32-106, MCA, is amended to read:

**“15-32-106. Procedure for obtaining benefit of deduction or credit.**

The department of revenue shall provide forms on which a taxpayer may apply for a tax credit under 15-32-109. The department of revenue shall approve a deduction or credit under 15-32-103 or 15-32-109 that demonstrably promotes energy conservation or uses a recognized nonfossil form of energy generation. The department of revenue may refer a deduction or credit involving energy generation to the department of environmental quality for its advice, and the department of environmental quality shall respond within 60 days. The department of revenue may refer a deduction or credit involving energy conservation to the department of ~~administration~~ *labor and industry* for its advice, and the department of ~~administration~~ *labor and industry* shall respond

within 60 days. The department of revenue may deny a deduction or credit that it finds to be impractical or ineffective.”

**Section 2.** Section 15-32-503, MCA, is amended to read:

**“15-32-503. Exploration incentive credit.** (1) The department shall grant to a person a credit against the person’s tax liability under Title 15, chapter 30 or 31, for the certified expenditures ~~of each~~ of the following exploration activities that are performed on land in the state for the purpose of determining the existence, location, extent, or quality of a mineral or coal deposit, regardless of land ownership:

- (a) surveying by geophysical or geochemical methods;
- (b) drilling exploration holes;
- (c) conducting underground exploration;
- (d) surface trenching and bulk sampling; or
- (e) performing other exploratory work, including aerial photographs, geological and geophysical logging, sample analysis, and metallurgical testing.

(2) (a) Except as provided in subsection (3), credit may not be granted under subsection (1) for exploration activity described in subsection (1) that occurs after the construction commencement date of a new mine.

(b) For the purposes of this subsection (2), “construction commencement date of a new mine” means the date no later than which all of the following have occurred:

(i) there has been issued to the owner or an agent of the owner permits, leases, title and other rights in land, and other approvals, permits, licenses, and certificates by federal, state, and local agencies that a reasonable and prudent person would consider adequate to commence construction of a mine in the expectation that all other approvals, permits, licenses, and certificates necessary for the completion of the facilities will be obtained;

(ii) all approvals, permits, licenses, and certificates are in full force and effect and without any modification that might jeopardize the completion or continued construction of the mine; and

(iii) an order, judgment, decree, determination, or award of a court or administrative or regulatory agency enjoining, either temporarily or permanently, the construction or the continuation of construction of the mine is not in effect.

(3) In addition to the grant of a credit for a new mine under subsection (2), a credit may be granted under subsection (1) for exploration activity for a mine that had previously operated, that has ceased to operate, and for which all previous mining approvals, permits, licenses, and certificates that allowed the previous operation are no longer in effect. However, a credit may not be granted under subsection (1) for exploration activity that occurs after the mine reopening date. For the purposes of this subsection (3), “mine reopening date” means the date not later than which all of the following have occurred:

(a) there has been issued to the owner or an agent of the owner permits, leases, title and other rights in land, and other approvals, permits, licenses, and certificates by federal, state, and local agencies that a reasonable and prudent person would consider adequate to commence operation of the former mine in the expectation that all other approvals, permits, licenses, and certificates necessary for the completion of the facilities will be obtained;



(b) all approvals, permits, licenses, and certificates for the reopened mine are in full force and effect and without any modification that might jeopardize the reopening of the former mine; and

(c) an order, judgment, decree, determination, or award of a court or administrative or regulatory agency enjoining, either temporarily or permanently, the reopening of the former mine is not in effect.”

**Section 3.** Section 15-32-507, MCA, is amended to read:

**“15-32-507. Credit limitation.** ~~A~~ A credit for each distinct mining operation for a specific exploration activity may not exceed a total of \$20 million for all exploration activities under 15-32-503 and accrues at the rate of 50% of the certified expenditures each year. The credit must be applied within 15 tax years after the taking of the credit is approved under 15-32-504. However, the tax year or years in which the credit is applied need not be:

(1) the tax year in which the person first incurs liability for payment of tax based on the person’s activity that is the basis of the claim for the credit; or

(2) consecutive tax years.”

Approved April 15, 2003

## CHAPTER NO. 339

[SB 341]

AN ACT INCREASING FROM 30 TO 45 DAYS THE TIME REQUIRED FOR AN INSURER TO PROVIDE NOTICE TO A POLICYHOLDER OF A CANCELLATION, NONRENEWAL, OR RENEWAL WITH CHANGES OF PROPERTY OR CASUALTY INSURANCE, MOTOR VEHICLE LIABILITY INSURANCE, OR PRIVATE RESIDENCE INSURANCE; INCREASING THE NOTIFICATION REQUIREMENT FOR CANCELLATION OR NONRENEWAL OF POLICIES ISSUED TO A SPECIFIC GROUP OF PROFESSIONAL LIABILITY POLICYHOLDERS FROM 60 TO 120 DAYS; AMENDING SECTIONS 33-15-1104, 33-15-1105, 33-15-1106, 33-23-212, 33-23-214, 33-23-302, AND 33-23-401, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

**Section 1.** Section 33-15-1104, MCA, is amended to read:

**“33-15-1104. Anniversary cancellation — anniversary rate increases.** (1) An insurer may issue a policy for a term longer than 1 year or for an indefinite term if the policy contains a clause that allows cancellation by the insurer if the insurer gives notice ~~30~~ 45 days prior to an anniversary date.

(2) If a policy has been issued for a term longer than 1 year and for additional premium consideration an annual premium has been guaranteed, the insurer may not increase the annual premium for the term of that policy.”

**Section 2.** Section 33-15-1105, MCA, is amended to read:

**“33-15-1105. Nonrenewal — renewal premium.** (1) (a) An insured has a right to reasonable notice of nonrenewal. Unless otherwise provided by statute or unless a longer term is provided in the policy, at least ~~30~~ 45 days prior to the expiration date provided in the policy, an insurer who does not intend to renew a policy beyond the agreed expiration date shall mail or deliver to the insured a

notice of ~~such~~ *the* intention *not to renew*. The insurer shall also mail or deliver a copy to the insured's insurance producer.

(b) Notification or nonrenewal to the insured's insurance producer via electronic transfer of data or by electronic data retrieval device meets the requirement of a mailed or delivered copy.

(2) An insurer shall give notice of premium due not more than 60 days or less than 10 days before the due date of a renewal premium. The notice must clearly state the effect of nonpayment of the premium on or before the due date.

(3) Subsections (1) and (2) do not apply if:

(a) the insured has obtained insurance elsewhere, has accepted replacement coverage, or has requested or agreed to nonrenewal; or

(b) the policy is expressly designated as nonrenewable.

(4) An insurer may not refuse to renew a property and casualty insurance policy on the basis of a single loss occurring during the policy period unless the insurer has previously disclosed in writing to the insured, at the time that the insured applied for the insurance or prior to the insured's renewal, that a single loss is among the insurer's criteria for nonrenewal."

**Section 3.** Section 33-15-1106, MCA, is amended to read:

**"33-15-1106. Renewal with altered terms.** (1) If an insurer offers or purports to renew a policy but on less favorable terms, at a higher rate, or at a higher rating plan, the new terms, rate, or rating plan take effect on the policy renewal date only if the insurer has mailed or delivered notice of the new terms, rate, or rating plan to the insured at least ~~30~~ 45 days before the expiration date.

(2) This section does not apply if the increase in the rate or the rating plan, or both, results from a classification change based on the altered nature or extent of the risk insured against."

**Section 4.** Section 33-23-212, MCA, is amended to read:

**"33-23-212. Notice required for cancellation — statement that insurer will specify reason upon request — exception — penalty.** (1) Notwithstanding any other provision of this code, a cancellation by an insurer of a motor vehicle liability insurance policy ~~may~~ is not ~~be~~ effective prior to the mailing or delivery to the named insured, at the address shown in the policy, of a written notice of the cancellation stating the date on which, not less than ~~30~~ 45 days after the date of ~~such~~ *the* mailing or delivery, the cancellation becomes effective.

(2) A notice of cancellation of a policy to which 33-23-211 applies ~~may~~ is not ~~be~~ effective unless mailed or delivered by the insurer to the named insured at least ~~30~~ 45 days prior to the effective date of cancellation; ~~provided, however, that where.~~ *However, if* cancellation is for nonpayment of premium, at least 10 days' notice of cancellation accompanied by the reason must be given. Unless the reason accompanies or is included in the notice of cancellation, the notice of cancellation must state or be accompanied by a statement that upon written request of the named insured, mailed or delivered to the insurer not less than 21 days prior to the effective date of cancellation, the insurer shall specify the reason for the cancellation.

(3) Subsection (2) does not apply to nonrenewal.

(4) Any insurer willfully violating any provisions of subsection (2) of this section is guilty of a misdemeanor and is punishable by a fine not exceeding \$500 for each violation thereof."

**Section 5.** Section 33-23-214, MCA, is amended to read:

**"33-23-214. Advance notice required for nonrenewal — exceptions.**

(1) ~~No~~ An insurer ~~may fail to~~ shall renew a motor vehicle liability policy unless it mails or delivers to the named insured, at the address shown in the policy, at least ~~30~~ 45 days' advance notice of its intention not to renew. ~~Such~~ The notice must contain or be accompanied by a statement that upon written request made not later than 1 month following the termination date of the policy of the named insured mailed or delivered to the insurer, the insurer will notify the insured in writing, within 15 days of ~~his~~ the insured's request, of the reason or reasons for ~~such~~ the nonrenewal.

(2) Notwithstanding the failure of an insurer to comply with this section, the motor vehicle liability policy must terminate on the effective date of any other replacement or succeeding motor vehicle liability policy procured by the insured with respect to any motor vehicle designated in both policies.

(3) This section does not apply where the named insured has failed to discharge when due any of ~~his~~ the insured's obligations in connection with the payment of premiums for the policy or the renewal ~~thereof of the policy~~ or any installment payments ~~therefor for the policy~~, whether payable directly to the insurer or its insurance producer or indirectly under any premium finance plan or extension of credit.

(4) This section does not apply in any of the following cases:

(a) if the insurer has manifested its willingness to renew;

(b) in case of nonpayment of premium; ~~provided that,~~ However, notwithstanding the failure of an insurer to comply with this section, the policy must terminate on the effective date of any other insurance policy with respect to any motor vehicle designated in both policies;

(c) if the insured's insurance producer or broker has secured other coverage acceptable to the insured at least 20 days prior to the anniversary date of the policy or termination of the policy period.

(5) Renewal of a motor vehicle liability policy does not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of ~~such~~ the renewal.

(6) A notice of nonrenewal of a motor vehicle liability policy under this section, ~~which~~ for a policy that has a term of less than 6 months, is effective only when based on one or more of the reasons listed in 33-23-211."

**Section 6.** Section 33-23-302, MCA, is amended to read:

**"33-23-302. Cancellation or alteration of policy — increase of premium rates — sixty days' written notice required.** Any insurer who insures a ~~physician and surgeon,~~ person licensed in the practice of medicine, as defined in 37-3-102, a dentist, registered nurse, nursing home administrator, registered physical therapist, podiatrist, licensed psychologist, osteopath, chiropractor, pharmacist, optometrist, or veterinarian, ~~duly~~ licensed under the laws of this state, or a licensed hospital or long-term care facility as the employer of any ~~such~~ person identified in this section against liability for error, omission, professional negligence, or performance of services without consent may not cancel or alter the policy insuring the person or increase the premium rates

~~thereon~~ on the policy without first providing the insured ~~60~~ 60 days' written notice of the insurer's intention to cancel or alter the policy or increase the premium rates."

**Section 7. Cancellation or nonrenewal of all policies.** Any insurer insuring a person described in 33-23-302 who elects to cancel or not renew all policies for all persons identified in 33-23-302 shall provide notice of the decision to cancel or not renew coverage to all affected persons described in 33-23-302 at least 120 days prior to cancellation or nonrenewal.

**Section 8.** Section 33-23-401, MCA, is amended to read:

**"33-23-401. Written notice required for cancellation or nonrenewal of insurance policies on homes — penalty.** (1) ~~No~~ An insurer ~~shall~~ may not cancel or refuse to renew any policy insuring private residences, including but not limited to fire, homeowner, theft, or liability insurance on any home occupied by the insured as a domicile, without first giving to the insured ~~30~~ 45 days' notice in writing, including in the notice a statement of the specific reason or reasons for canceling or not renewing the policy.

(2) Violation of this section is punishable under 33-1-104."

**Section 9. Codification instruction.** [Section 7] is intended to be codified as an integral part of Title 33, chapter 23, part 3, and the provisions of Title 33, chapter 23, part 3, apply to [section 7].

**Section 10. Applicability.** [This act] applies to policies effective on or after October 1, 2003.

Approved April 15, 2003

## CHAPTER NO. 340

[SB 380]

AN ACT AUTHORIZING THE TRUSTEES OF A HIGH SCHOOL OR K-12 PUBLIC SCHOOL DISTRICT TO ESTABLISH A STUDENT FINANCIAL INSTITUTION AT A HIGH SCHOOL; DEFINING "STUDENT FINANCIAL INSTITUTION"; AMENDING SECTIONS 20-3-324, 32-1-102, 32-1-402, AND 32-3-106, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

**Section 1. Student financial institution defined — obligations of minor — applicability of laws.** (1) The term "student financial institution" means a financial institution that:

- (a) is operated as a high school education program;
- (b) is adopted by a school district board of trustees;
- (c) is advised by but not owned by one or more state-chartered or federally chartered financial institutions, limited to a state or national bank, a state or federal savings and loan association, a trust company, an investment company, or a state or federal credit union;
- (d) is located on property owned by a high school district, as defined in 20-6-101, or a K-12 school district, as defined in 20-6-701;

(e) has as its customers only those students who are enrolled in the high school in which the institution is located; and

(f) has a written commitment from the school district board of trustees guaranteeing reimbursement of any depositor's funds that are lost due to insolvency of the student financial institution.

(2) The funds of a student financial institution are not school district or public funds for the purposes of any state law governing the use or investment of school district or other public funds.

(3) To advise a student financial institution, a state-chartered bank, savings and loan association, trust company, investment company, or credit union shall provide written notice to the department of administration.

(4) With regard to the operation of a student financial institution, the obligations of a minor pertaining to borrowing money, cashing checks, and making deposits have the same force and effect as though they were the obligations of a person over the age of majority.

(5) Except as provided in 32-1-102, 32-1-402, and 32-3-106, a student financial institution established pursuant to this section is not subject to Title 32, chapters 1 through 3, or any other provision of state law that regulates banks, credit unions, other financial institutions, or currency exchanges.

**Section 2.** Section 20-3-324, MCA, is amended to read:

**"20-3-324. Powers and duties.** As prescribed elsewhere in this title, the trustees of each district shall:

(1) employ or dismiss a teacher, principal, or other assistant upon the recommendation of the district superintendent, the county high school principal, or other principal as the board considers necessary, accepting or rejecting any recommendation as the trustees in their sole discretion determine, in accordance with the provisions of Title 20, chapter 4;

(2) employ and dismiss administrative personnel, clerks, secretaries, teacher aides, custodians, maintenance personnel, school bus drivers, food service personnel, nurses, and any other personnel considered necessary to carry out the various services of the district;

(3) administer the attendance and tuition provisions and govern the pupils of the district in accordance with the provisions of the pupils chapter of this title;

(4) call, conduct, and certify the elections of the district in accordance with the provisions of the school elections chapter of this title;

(5) participate in the teachers' retirement system of the state of Montana in accordance with the provisions of the teachers' retirement system chapter of Title 19;

(6) participate in district boundary change actions in accordance with the provisions of the districts chapter of this title;

(7) organize, open, close, or acquire isolation status for the schools of the district in accordance with the provisions of the school organization part of this title;

(8) adopt and administer the annual budget or a budget amendment of the district in accordance with the provisions of the school budget system part of this title;

(9) conduct the fiscal business of the district in accordance with the provisions of the school financial administration part of this title;

(10) subject to 15-10-420, establish the ANB, BASE budget levy, over-BASE budget levy, additional levy, operating reserve, and state impact aid amounts for the general fund of the district in accordance with the provisions of the general fund part of this title;

(11) establish, maintain, budget, and finance the transportation program of the district in accordance with the provisions of the transportation parts of this title;

(12) issue, refund, sell, budget, and redeem the bonds of the district in accordance with the provisions of the bonds parts of this title;

(13) when applicable, establish, financially administer, and budget for the tuition fund, retirement fund, building reserve fund, adult education fund, nonoperating fund, school food services fund, miscellaneous programs fund, building fund, lease or rental agreement fund, traffic education fund, impact aid fund, interlocal cooperative agreement fund, and other funds as authorized by the state superintendent of public instruction in accordance with the provisions of the other school funds parts of this title;

(14) when applicable, administer any interlocal cooperative agreement, gifts, legacies, or devises in accordance with the provisions of the miscellaneous financial parts of this title;

(15) hold in trust, acquire, and dispose of the real and personal property of the district in accordance with the provisions of the school sites and facilities part of this title;

(16) operate the schools of the district in accordance with the provisions of the school calendar part of this title;

(17) establish and maintain the instructional services of the schools of the district in accordance with the provisions of the instructional services, textbooks, K-12 career and vocational/technical education, and special education parts of this title;

(18) establish and maintain the school food services of the district in accordance with the provisions of the school food services parts of this title;

(19) make reports from time to time as the county superintendent, superintendent of public instruction, and board of public education may require;

(20) retain, when considered advisable, a physician or registered nurse to inspect the sanitary conditions of the school or the general health conditions of each pupil and, upon request, make available to any parent or guardian any medical reports or health records maintained by the district pertaining to the child;

(21) for each member of the trustees, visit each school of the district not less than once each school fiscal year to examine its management, conditions, and needs, except trustees from a first-class school district may share the responsibility for visiting each school in the district;

(22) procure and display outside daily in suitable weather on school days at each school of the district an American flag that measures not less than 4 feet by 6 feet;

(23) provide that an American flag that measures approximately 12 inches by 18 inches be prominently displayed in each classroom in each school of the

district, except in a classroom in which the flag may get soiled. This requirement is waived if the flags are not provided by a local civic group.

(24) adopt and administer a district policy on assessment for placement of any child who enrolls in a school of the district from a nonpublic school that is not accredited, as required in 20-5-110;

(25) upon request and in compliance with confidentiality requirements of state and federal law, disclose to interested parties school district student assessment data for any test required by the board of public education;

(26) consider and may enter into an interlocal agreement with a postsecondary institution, as defined in 20-9-706, that authorizes 11th and 12th grade students to obtain credits through classes available only at a postsecondary institution; ~~and~~

*(27) consider and, if advisable for a high school or K-12 district, establish a student financial institution, as defined in [section 1]; and*

~~(27)~~ (28) perform any other duty and enforce any other requirements for the government of the schools prescribed by this title, the policies of the board of public education, or the rules of the superintendent of public instruction.”

**Section 3.** Section 32-1-102, MCA, is amended to read:

**“32-1-102. Institutions to which chapter is applicable.** (1) The word “bank” as used in this chapter means any corporation, other than a foreign capital depository, as defined in 32-8-103, that has been incorporated to conduct the business of receiving money on deposit or transacting a trust or investment business, as defined in this chapter.

(2) The soliciting, receiving, or accepting of money or its equivalent on deposit as a regular business is doing a commercial or savings bank business, except for the operations of a foreign capital depository, whether the deposit is made subject to check or is evidenced by a certificate of deposit, a passbook, a note, or other receipt. This section does not apply to or include money or its equivalent left in escrow or left with an agent pending investment in real estate or securities for or on account of the agent’s principal.

(3) It is unlawful for any corporation, partnership, firm, or individual to engage in or transact a banking business within this state except by means of a corporation duly organized for that purpose.

(4) Banks are divided into the following classes:

- (a) commercial banks;
- (b) savings banks;
- (c) trust companies;
- (d) investment companies.

(5) This chapter does not apply to any investment company or corporation established prior to March 8, 1927, under authority of the law of Montana not accepting, receiving, or holding money on deposit.

(6) Except for the provisions listed in 32-8-106, this chapter does not apply to foreign capital depositories.

*(7) This chapter does not apply to a student financial institution, as defined in [section 1].”*

**Section 4.** Section 32-1-402, MCA, is amended to read:

**“32-1-402. When advertising as bank prohibited — trade names restricted.** (1) Except as provided in subsection (4), a person, firm, company, partnership, or corporation, either domestic or foreign, that is not subject to the supervision of the department and not required by the provisions of this chapter to report to it and that has not received a certificate to do a banking business from the department, may not:

(a) *except for a student financial institution, as defined in [section 1]*, advertise that the person or entity is receiving or accepting money or savings for deposit, investment, or otherwise and issuing notices or certificates of deposit; or

(b) use an office sign at the place where the business is transacted having on it an artificial or corporate name or other words indicating that:

- (i) the place or office is the place or office of a bank or trust company;
- (ii) deposits are received there or payments made on checks; or
- (iii) any other form of banking business is transacted there.

(2) The person, firm, company, partnership, or corporation, domestic or foreign, may not use or circulate letterheads, billheads, blank notes, blank receipts, certificates, circulars, or any written or printed or partly written and partly printed papers that contain an artificial or corporate name or other word or words indicating that the business is the business of a bank, savings bank, or trust or investment company.

(3) The person, firm, company, partnership, or corporation or any agent of a foreign corporation not having an established place of business in the state may not solicit or receive deposits or transact business in the way or manner of a bank, savings bank, trust, or investment company or in a manner that leads the public to believe that its business is that of a bank, savings bank, trust, or investment company.

(4) (a) A person, firm, company, partnership, or corporation, domestic or foreign, *except for a student financial institution, as defined in [section 1]*, that is not subject to the supervision of the department and not required by the provisions of this chapter to report to it and that has not received from the department a certificate to do a banking business may not transact business under a name or title that contains the word “bank”, “banker”, “banking”, “savings bank”, “saving”, “trust”, “trustee”, “trust company”, or “investment company” unless the department has granted a waiver. This section does not prohibit the use of the word “bank” in the name or title of any bank holding company registered with the board of governors of the federal reserve system pursuant to 12 U.S.C. 1844.

(b) The department may grant a waiver to allow the use of a restricted word listed in subsection (4)(a) to a nonprofit organization if:

- (i) the organization is not acting as a financial institution; and
- (ii) the name used is not likely to mislead a reasonable individual into thinking that the organization is acting as a financial institution.

(5) A person, firm, company, partnership, or corporation, domestic or foreign, violating a provision of this section shall forfeit to the state \$100 a day for every day or part of a day during which the violation continues.

(6) Upon suit by the department, the court may issue an injunction restraining the person, firm, company, partnership, or corporation during



pendency of the action and permanently from further using those words in violation of the provisions of this section or from further transacting business in a manner which leads the public to believe that its business is that of a bank, savings bank, trust, or investment company and may enter any other order or decree as equity and justice require.”

**Section 5.** Section 32-3-106, MCA, is amended to read:

**“32-3-106. Instruction in schools — establishment of a student financial institution.** With the consent and under the direction of the state superintendent of public instruction, the organization, management, and extension of credit unions as set forth in this chapter may be taught in the public schools of this state, *and the boards of trustees of a high school district, as defined in 20-6-101, or a K-12 district, as defined in 20-6-701, may establish a school financial institution, as defined in [section 1].*”

**Section 6. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 32, chapter 1, part 1, and the provisions of Title 32, chapter 1, part 1, apply to [section 1].

**Section 7. Effective date.** [This act] is effective July 1, 2003, and applies to a school financial institution opened on or after July 1, 2003.

Approved April 15, 2003

## CHAPTER NO. 341

[SB 432]

AN ACT PROVIDING FOR LICENSED REAL ESTATE APPRAISAL TRAINEES WHO ARE AUTHORIZED ONLY TO ASSIST A CERTIFIED REAL ESTATE APPRAISER IN THE PERFORMANCE OF AN APPRAISAL ASSIGNMENT; PROVIDING QUALIFICATIONS; AND AMENDING SECTIONS 37-54-102, 37-54-202, AND 37-54-304, MCA.

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

**Section 1.** 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 Appraisal Practice, as issued by the appraisal foundation. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) “Appraisal foundation” means the appraisal foundation incorporated as an Illinois 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.

(2) "Board" means the board of real estate appraisers provided for in 2-15-1758.

(3) "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.

(4) "Department" means the department of labor and industry provided for in 2-15-1701.

(5) "*Licensed real estate appraisal trainee*" means a person authorized only to assist a certified real estate appraiser in the performance of an appraisal assignment.

~~(5)~~(6) "Licensed real estate appraiser" means a person who holds a current valid real estate appraiser license issued under 37-54-201."

**Section 2.** Section 37-54-202, MCA, is amended to read:

**"37-54-202. Qualifications for licensure.** (1) To qualify for a real estate appraiser license, an applicant:

~~(1)~~(a) must be of good moral character;

~~(2)~~(b) shall successfully complete a course of study prescribed by the board;

~~(3)~~(c) must have the type and amount of experience in real estate appraisal prescribed by the board;

~~(4)~~(d) shall successfully complete an examination prescribed by the board; and

~~(5)~~(e) shall comply with any other requirements related to the practice of real estate appraisal as prescribed by the board by rule.

(2) *To qualify for licensure as a real estate appraiser trainee, an applicant:*

(a) *must be of good moral character;*

(b) *shall successfully complete a course of study prescribed by the board;*

(c) *must provide a written acknowledgment from the certified real estate appraiser that the applicant will be assisting; and*

(d) *is not required to take an examination."*

**Section 3.** Section 37-54-304, MCA, is amended to read:

**"37-54-304. Certification examination.** (1) A person who satisfies the qualification requirements of 37-54-202(1) and the education and experience requirements of 37-54-303 may apply for examination as a certified real estate appraiser in the manner prescribed by this section.

(2) In addition to the examination subjects required by the board, an applicant must be examined on the types of misconduct for which disciplinary action may be initiated under this chapter.

(3) Examinations must be given at least four times each year at times and places as the board determines.

(4) An applicant may not retake the examination within 6 months after having failed it a second or subsequent time."

Approved April 15, 2003

**CHAPTER NO. 342**

[SB 460]

AN ACT REVISING THE LAWS RELATING TO THE TAXATION OF METAL MINES; PROVIDING A DEFINITION OF "BASIC TREATMENT AND REFINERY CHARGES" FOR THE PURPOSES OF DETERMINING THE GROSS PROCEEDS TAX OF METAL MINES AND THE METALLIFEROUS MINES LICENSE TAX; CLARIFYING THE TAXATION OF PROCESSED CONCENTRATE UNDER THE METALLIFEROUS MINES LICENSE TAX; AMENDING SECTIONS 15-23-801 AND 15-37-103, 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 15-23-801, MCA, is amended to read:

**"15-23-801. Definitions.** As used in this part, the following definitions apply:

(1) "Agreement not at arm's length" means an agreement between parties when the sales price does not represent market value.

(2) "Basic treatment and refinery charges" means the costs or charges incurred in the smelting, refining, or other treatment of ore and includes:

(a) labor costs, including wages, salaries, and fringe benefits;

(b) utility and fuel costs;

(c) costs of maintenance, repairs, and supplies;

(d) costs of materials;

(e) depreciation computed on a straight-line basis with a 20-year life for buildings and improvements and a 7-year life for all other depreciable assets;

(f) equipment and machinery rental;

(g) costs of pollution control, environmental testing, and slag removal;

(h) costs incurred for training, freight, engineering services, insurance, and license fees directly attributable to smelting or refining;

(i) administrative services in Montana, including that portion of accounting, laboratory, purchasing, human resources, and warehouse allocable to smelting or refining; and

(j) any costs, charges, or fees paid by the mining company to other persons or entities for treating or processing ore, concentrate, dore, bullion, matte, or other form of processed concentrate.

(3) "Gross proceeds" or "gross metal yield" or "gross value of product" means the receipts realized from the extraction and sale of metals or concentrate containing metals.

~~(3)~~(4) "Merchantable value" means the receipts of all salable metals produced or extracted in a county over a 12-month period. If the extracted ores are milled, smelted, or reduced by the taxpayer, then the merchantable value in the county in which they are extracted is the receipts received for these metals after processing.

~~(4)~~(5) "Receipts received" means the monetary payment or refined metal received by the mining company from the metal trader, smelter, roaster, or refinery, determined by multiplying the quantity of metal received by the metal

trader, smelter, roaster, or refinery by the quoted price for the metal and then subtracting the following:

- (a) basic treatment and refinery charges;
- (b) costs of transporting the mineral product from the mine or mill to the smelter or other processor, including costs of demurrage, storage, interest, and other miscellaneous costs related to transporting the mineral product;
- (c) quantity deductions;
- (d) price deductions;
- (e) interest; and
- (f) penalty metal, impurity, and moisture deductions as specified by contract between the mining company and the receiving metal trader, smelter, roaster, or refinery.”

**Section 2.** Section 15-37-103, MCA, is amended to read:

**“15-37-103. Rate of tax.** (1) The license tax to be paid by a person engaged in or carrying on the business of working or operating any mine or mining property in this state from which gold, silver, copper, lead, or any other metal or metals or precious or semiprecious gems or stones are produced is an amount computed on the gross value of product derived by the person from mining business, work, or operation within this state during the preceding reporting period.

(2) Concentrate shipped to a smelter, mill, or reduction work is taxed at the following rates:

Gross Value of Product	Rate of Tax (percentage of gross value)
first \$250,000	0%
more than \$250,000	1.81% of the increment

(3) Gold, silver, or any platinum-group metal that is dore, bullion, ~~or~~ matte, or another form of processed concentrate that is processed in a treatment facility owned or operated by the taxpayer and that is sold or shipped to a refinery for final processing is taxed at the following rates:

Gross Value of Product	Rate of Tax (percentage of gross value)
first \$250,000	0%
more than \$250,000	1.6% of the increment”

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

**Section 4. Applicability.** [This act] applies to metal mine production occurring after December 31, 2003.

Approved April 15, 2003

## CHAPTER NO. 343

[HB 40]

AN ACT GENERALLY REVISING THE LAWS RELATING TO AN INVESTIGATIVE STOP AND FRISK BY PEACE OFFICERS; ELIMINATING THE REQUIREMENT THAT A PEACE OFFICER PROVIDE A PERSON

WITH CERTAIN INFORMATION PRIOR TO QUESTIONING OF THE PERSON AFTER AN INVESTIGATIVE STOP; AMENDING SECTION 46-5-401, MCA; AND REPEALING SECTION 46-5-402, MCA.

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

**Section 1.** Section 46-5-401, MCA, is amended to read:

**“46-5-401. Investigative stop and frisk.** (1) In order to obtain or verify an account of the person’s presence or conduct or to determine whether to arrest the person, a peace officer may stop any person or vehicle that is observed in circumstances that create a particularized suspicion that the person or occupant of the vehicle has committed, is committing, or is about to commit an offense. *If the stop is for a violation under Title 61, unless emergency circumstances exist or the officer has reasonable cause to fear for the officer’s own safety or for the public’s safety, the officer shall as promptly as possible inform the person of the reason for the stop.*

(2) *A peace officer who has lawfully stopped a person or vehicle under this section may:*

(a) *request the person’s name and present address and an explanation of the person’s actions and, if the person is the driver of a vehicle, demand the person’s driver’s license and the vehicle’s registration and proof of insurance; and*

(b) *frisk the person and take other reasonably necessary steps for protection if the officer has reasonable cause to suspect that the person is armed and presently dangerous to the officer or another person present. The officer may take possession of any object that is discovered during the course of the frisk if the officer has probable cause to believe that the object is a deadly weapon until the completion of the stop, at which time the officer shall either immediately return the object, if legally possessed, or arrest the person.*

(3) *A peace officer acting under subsection (2) while the peace officer is not in uniform shall inform the person as promptly as possible under the circumstances and in any case before questioning the person that the officer is a peace officer.”*

**Section 2. Repealer.** Section 46-5-402, MCA, is repealed.

Approved April 15, 2003

## CHAPTER NO. 344

[HB 54]

AN ACT REVISING THE CRIMINAL LAWS RELATING TO STALKING, CHILD PORNOGRAPHY, DEFAMATION, AND PRIVACY IN COMMUNICATIONS TO INCLUDE ACTS INVOLVING THE USE OF ELECTRONIC COMMUNICATIONS; DEFINING “ELECTRONIC COMMUNICATION”; CHANGING THE VENUE FOR SOME OF THOSE CRIMES; AND AMENDING SECTIONS 45-5-220, 45-5-625, 45-8-212, 45-8-213, AND 46-3-112, MCA.

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

**Section 1.** Section 45-5-220, MCA, is amended to read:

**“45-5-220. Stalking — exemption — penalty.** (1) A person commits the offense of stalking if the person purposely or knowingly causes another person

substantial emotional distress or reasonable apprehension of bodily injury or death by repeatedly:

- (a) following the stalked person; or
- (b) harassing, threatening, or intimidating the stalked person, in person or by phone, by mail, *electronic communication, as defined in 45-8-213*, or by any other action, device, or method.

(2) This section does not apply to a constitutionally protected activity.

(3) For the first offense, a person convicted of stalking shall be imprisoned in the county jail for a term not to exceed 1 year or fined an amount not to exceed \$1,000, or both. For a second or subsequent offense or for a first offense against a victim who was under the protection of a restraining order directed at the offender, the offender shall be imprisoned in the state prison for a term not to exceed 5 years or fined an amount not to exceed \$10,000, or both. A person convicted of stalking may be sentenced to pay all medical, counseling, and other costs incurred by or on behalf of the victim as a result of the offense.

(4) Upon presentation of credible evidence of violation of this section, an order may be granted, as set forth in Title 40, chapter 15, restraining a person from engaging in the activity described in subsection (1).

(5) For the purpose of determining the number of convictions under this section, "conviction" means:

- (a) a conviction, as defined in 45-2-101, in this state;
- (b) a conviction for a violation of a statute similar to this section in another state; or
- (c) 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 statute similar to this section, which forfeiture has not been vacated.

(6) Attempts by the accused person to contact or follow the stalked person after the accused person has been given actual notice that the stalked person does not want to be contacted or followed constitutes prima facie evidence that the accused person purposely or knowingly followed, harassed, threatened, or intimidated the stalked person."

**Section 2.** 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 persuades, entices, counsels, or procures a child to engage in sexual conduct, actual or simulated, for use as designated in subsection (1)(a), (1)(b), or (1)(d);
- (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, as defined in 45-8-213*, in which children are engaged in sexual conduct, actual or simulated;

(e) knowingly possesses any visual or print medium, *including a medium by use of electronic communication, as defined in 45-8-213*, in which children are 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; or

(g) possesses with intent to sell any visual or print medium, *including a medium by use of electronic communication, as defined in 45-8-213*, in which children are engaged in sexual conduct, actual or simulated.

(2) (a) 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 sex offender information or treatment course or program conducted or approved by the department of corrections."

**Section 3.** Section 45-8-212, MCA, is amended to read:

**"45-8-212. Criminal defamation.** (1) Defamatory matter is anything that exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or injury to the person's or its business or occupation.

(2) Whoever, with knowledge of its defamatory character, orally, in writing, or by any other means, *including by electronic communication, as defined in 45-8-213*, communicates any defamatory matter to a third person without the consent of the person defamed commits the offense of criminal defamation and may be sentenced to imprisonment for not more than 6 months in the county jail or a fine of not more than \$500, or both.

(3) Violation of subsection (2) is justified if:

(a) the defamatory matter is true;

(b) the communication is absolutely privileged;

(c) the communication consists of fair comment made in good faith with respect to persons participating in matters of public concern;

(d) the communication consists of a fair and true report or a fair summary of any judicial, legislative, or other public or official proceedings; or

(e) the communication is between persons each having an interest or duty with respect to the subject matter of the communication and is made with the purpose to further the interest or duty.

(4) A person may not be convicted on the basis of an oral communication of defamatory matter except upon the testimony of at least two other persons that they heard and understood the oral statement as defamatory or upon a plea of guilty or nolo contendere."

**Section 4.** Section 45-8-213, MCA, is amended to read:

**"45-8-213. Privacy in communications.** (1) Except as provided in 69-6-104, a person commits the offense of violating privacy in communications if the person knowingly or purposely:

(a) with the purpose to terrify, intimidate, threaten, harass, annoy, or offend, communicates with a person by ~~telephone or electronic mail~~ *electronic communication* and uses obscene, lewd, or profane language, suggests a lewd or lascivious act, or threatens to inflict injury or physical harm to the person or property of the person. The use of obscene, lewd, or profane language or the making of a threat or lewd or lascivious suggestions is prima facie evidence of an intent to terrify, intimidate, threaten, harass, annoy, or offend.

(b) uses ~~a telephone or electronic mail~~ *an electronic communication* to attempt to extort money or any other thing of value from a person or to disturb by repeated ~~telephone calls or electronic mailings~~ *communications* the peace, quiet, or right of privacy of a person at the place where the ~~telephone call or calls or electronic mailings~~ *communications* are received;

(c) records or causes to be recorded a conversation by use of a hidden electronic or mechanical device that reproduces a human conversation without the knowledge of all parties to the conversation. This subsection (1)(c) does not apply to:

(i) elected or appointed public officials or employees when the transcription or recording is done in the performance of official duty;

(ii) persons speaking at public meetings; or

(iii) persons given warning of the transcription or recording.

~~(d) by means of any machine, instrument, or contrivance or in any other manner;~~

~~(i) reads or attempts to read a message or learn the contents of a message while it is being sent over a telegraph line or by electronic mail;~~

~~(ii) learns or attempts to learn the contents of a message while it is in a telegraph office or is being received at or sent from a telegraph office; or~~

~~(iii) uses, attempts to use, or communicates to others any information obtained as provided in this subsection (1)(d);~~

~~(e) discloses the contents of a telegraphic message, electronic mail, or any part of a telegraphic message or electronic mail addressed to another person without the permission of the person, unless directed to do so by the lawful order of a court; or~~

~~(f) opens or reads or causes to be read any sealed letter or electronic mail not addressed to the person opening the letter or reading the electronic mail without being authorized to do so by either the writer of the letter, the sender of the electronic mail, or the person to whom the letter or electronic mail is addressed or, without the like authority, publishes any of the contents of the letter or electronic mail knowing the letter or electronic mail to have been unlawfully opened.~~



~~(2) Subsection (1) does not apply to an employer or a representative of an employer who opens or reads, causes to be opened or read, or further publishes an electronic mail or other message that either originates at or is received by a computer or computer system that is owned, leased, or operated by or for the employer.~~

~~(3)(2)~~ Except as provided in 69-6-104, a person commits the offense of violating privacy in communications if the person purposely intercepts ~~a telephonic voice or data~~ *an electronic* communication. This subsection does not apply to elected or appointed public officials or employees when the interception is done in the performance of official duty or to persons given warning of the interception.

~~(4)(3)~~ (a) A person convicted of the offense of violating privacy in communications shall be fined not to exceed \$500 or imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) On a second conviction of subsection (1)(a) or (1)(b), a person shall be imprisoned in the county jail for a term not to exceed 1 year or be fined an amount not to exceed \$1,000, or both.

(c) On a third or subsequent conviction of subsection (1)(a) or (1)(b), a person shall be imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed \$10,000, or both.

(4) "*Electronic communication*" means any transfer between persons 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."

**Section 5.** Section 46-3-112, MCA, is amended to read:

**"46-3-112. Requisite act in multiple counties.** (1) Except as provided in 46-3-110(2), if two or more acts are requisite to the commission of an offense or if two or more acts are committed in furtherance of a common scheme, the charge may be filed in any county in which any of the acts or offenses occurred.

(2) Except as provided in 46-3-110(2), if an act requisite to the commission of an offense occurs or continues in more than one county, the charge may be filed in any county in which the act occurred or continued.

(3) *If an element of an offense under 45-5-220, 45-5-625, 45-8-212, or 45-8-213 involves an electronic communication, the charge may be filed in the county in or from which the electronic communication was sent or in the county in which the electronic communication was received or to which it was sent.*

Approved April 15, 2003

## CHAPTER NO. 345

[HB 170]

AN ACT REVISING THE LAW RELATING TO REVOCATION OF A SUSPENDED OR DEFERRED SENTENCE BY PROVIDING THAT RECENT LEGISLATIVE CHANGES TO THE REVOCATION LAW APPLY RETROACTIVELY; AMENDING SECTION 46-18-203, 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 46-18-203, MCA, is amended to read:

**“46-18-203. Revocation of suspended or deferred sentence.** (1) Upon the filing of a petition for revocation showing probable cause that the offender has violated any condition of a sentence or any condition of a deferred imposition of sentence, the judge may issue an order for a hearing on revocation. The order must require the offender to appear at a specified time and place for the hearing and be served by delivering a copy of the petition and order to the offender personally. The judge may also issue an arrest warrant directing any peace officer or a probation and parole officer to arrest the offender and bring the offender before the court.

(2) The petition for a revocation must be filed with the sentencing court during the period of suspension or deferral. Expiration of the period of suspension or deferral after the petition is filed does not deprive the court of its jurisdiction to rule on the petition.

(3) The provisions pertaining to bail, as set forth in Title 46, chapter 9, are applicable to persons arrested pursuant to this section.

(4) Without unnecessary delay, the offender must be brought before the judge, and the offender must be advised of:

(a) the allegations of the petition;

(b) the opportunity to appear and to present evidence in the offender's own behalf;

(c) the opportunity to question adverse witnesses; and

(d) the right to be represented by counsel at the revocation hearing pursuant to Title 46, chapter 8, part 1.

(5) A hearing is required before a suspended or deferred sentence can be revoked or the terms or conditions of the sentence can be modified, unless:

(a) the offender admits the allegations and waives the right to a hearing; or

(b) the relief to be granted is favorable to the offender and the prosecutor, after having been given notice of the proposed relief and a reasonable opportunity to object, has not objected. An extension of the term of probation is not favorable to the offender for the purposes of this subsection (5)(b).

(6) At the hearing, the prosecution shall prove, by a preponderance of the evidence, that there has been a violation of the terms and conditions of the suspended or deferred sentence. However, when a failure to pay restitution is the basis for the petition, the offender may excuse the violation by showing sufficient evidence that the failure to pay restitution was not attributable to a failure on the offender's part to make a good faith effort to obtain sufficient means to make the restitution payments as ordered.

(7) (a) If the judge finds that the offender has violated the terms and conditions of the suspended or deferred sentence, the judge may:

(i) continue the suspended or deferred sentence without a change in conditions;

(ii) continue the suspended sentence with modified or additional terms and conditions;

(iii) revoke the suspension of sentence and require the offender to serve either the sentence imposed or any lesser sentence; or

(iv) if the sentence was deferred, impose any sentence that might have been originally imposed.

(b) If a suspended or deferred sentence is revoked, the judge shall consider any elapsed time and either expressly allow all or part of the time as a credit against the sentence or reject all or part of the time as a credit. The judge shall state the reasons for the judge's determination in the order. Credit, however, must be allowed for time served in a detention center or home arrest time already served.

(c) If a judge finds that an offender has not violated a term or condition of a suspended or deferred sentence, that judge is not prevented from setting, modifying, or adding conditions of probation as provided in 46-23-1011.

(8) If the judge finds that the prosecution has not proved, by a preponderance of the evidence, that there has been a violation of the terms and conditions of the suspended or deferred sentence, the petition must be dismissed and the offender, if in custody, must be immediately released.

(9) *The provisions of this section apply to any offender whose suspended or deferred sentence is subject to revocation regardless of the date of the offender's conviction and regardless of the terms and conditions of the offender's original sentence.*

**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 offenders in the custody of or under the supervision of the department of corrections on [the effective date of this act].

Approved April 15, 2003

## CHAPTER NO. 346

[HB 171]

AN ACT PROVIDING THAT A CRIMINAL OFFENDER HAS 1 YEAR AFTER FINAL JUDGMENT TO WITHDRAW A PLEA OF GUILTY OR NOLO CONTENDERE; PROVIDING AN EXCEPTION; AMENDING SECTION 46-16-105, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

**Section 1.** Section 46-16-105, MCA, is amended to read:

**"46-16-105. Plea of guilty — use of two-way electronic audio-video communication.** (1) Before or during trial, a plea of guilty or nolo contendere may be accepted when:

(a) subject to the provisions of subsection (3), the defendant enters a plea of guilty or nolo contendere in open court; and

(b) the court has informed the defendant of the consequences of the plea and of the maximum penalty provided by law that may be imposed upon acceptance of the plea.

(2) At any time before ~~or after~~ judgment *or, except when a claim of innocence is supported by evidence of a fundamental miscarriage of justice, within 1 year after judgment becomes final*, the court may, for good cause shown, permit the

plea of guilty or nolo contendere to be withdrawn and a plea of not guilty substituted. *A judgment becomes final for purposes of this subsection (2):*

(a) *when the time for appeal to the Montana supreme court expires;*

(b) *if an appeal is taken to the Montana supreme court, when the time for petitioning the United States supreme court for review expires; or*

(c) *if review is sought in the United States supreme court, on the date that that court issues its final order in the case.*

(3) For purposes of this section, in cases in which the defendant is charged with a misdemeanor offense, an entry of a plea of guilty or nolo contendere through the use of two-way electronic audio-video communication, allowing all of the participants to be observed and heard in the courtroom by all present, is considered to be an entry of a plea of guilty or nolo contendere in open court. Audio-video communication may be used if neither party objects and the court agrees to its use. The audio-video communication must operate as provided in 46-12-201."

**Section 2. Effective date.** [This act] is effective July 1, 2003.

**Section 3. Applicability.** [This act] applies to all offenders who plead guilty on or after [the effective date of this act].

Approved April 15, 2003

## CHAPTER NO. 347

[HB 388]

AN ACT ALLOWING INDIVIDUAL OWNERS OF TRACTS OF LAND 3 ACRES OR SMALLER IN SIZE THAT ARE LOCATED WITHIN THE BOUNDARIES OF IRRIGATION DISTRICTS AND THAT ARE NOT BEING SERVED BY THE IRRIGATION DISTRICT WORKS TO BE ELIMINATED FROM FUTURE SERVICES, ASSESSMENTS OVER AND ABOVE CURRENT INDEBTEDNESS, AND LIABILITY UPON PAYMENT OF A SEVERANCE FEE OR NEGOTIATED AMOUNT; REQUIRING THAT OWNERS OF TRACTS LOCATED WITHIN AN IRRIGATION DISTRICT THAT HAS A CONTRACT WITH THE UNITED STATES BUREAU OF RECLAMATION MAY NOT PAY A SEVERANCE FEE OR NEGOTIATED AMOUNT TO BE EXCLUDED FROM FUTURE SERVICES, ASSESSMENTS, AND LIABILITY OF THE DISTRICT IF THAT WOULD IMPAIR THE CONTRACT UNLESS THE PETITIONER COOPERATES WITH THE DISTRICT IN ORDER TO COMPLY WITH FEDERAL LAWS AND REQUIREMENTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

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

**Section 1. Small tract petition to exclude land from future services, assessments, and liability of irrigation district.** (1) (a) Subject to subsection (1)(b), whenever a tract of record that is 3 acres or smaller in size is located within an irrigation district, is not served and has not been served for the previous 5 years by any district system, facility, or other undertaking, and cannot be served without an unreasonable burden being placed on the owner of the tract or the district, the owner of the tract may:

(i) petition for the purpose of excluding the tract from future services, assessments, and liability of the district as provided in subsection (2); or

(ii) file a request with the irrigation district for the purpose of excluding the tract from future services, assessments, and liability of the district as provided in subsection (1)(c).

(b) If the exclusion of the tract from future services, assessments, and liability of the district threatens provisions of a United States bureau of reclamation contract, the owner of the tract may not petition for the exclusion of the tract from future services, assessments, and liability unless the owner cooperates with the district in order to comply with federal laws and requirements.

(c) A tract owner may file a request with the district to exclude a tract from future services, assessments, and liability of the district. The district may agree with the tract owner on any amount determined appropriate for that exclusion.

(2) When a tract of land in an irrigation district meets the requirements of subsection (1), the owner may petition the district court for an exclusion of the tract from future services, assessments, and liability of the district, subdistrict, or combination of a district and subdistrict. The petition must be signed by all persons who hold title to the tract and must include:

(a) the name of the irrigation district;

(b) the name and address of the persons holding title to the tract;

(c) evidence of the title to the tract as provided in 85-7-101 and 85-7-102;

(d) a copy of a map or plat of the irrigation district showing the location of the tract to be excluded from future services, assessments, and liability of the district and the relation of that land to the irrigation works of the district;

(e) a statement, corroborated by adequate documentation, that the users of the tract do not and cannot feasibly obtain water from the irrigation district through existing irrigation works and no longer want the tract to be included in the irrigation district's assessment rolls;

(f) a copy of a recent tax statement documenting assessment of the tract by the irrigation district;

(g) a request that the tract be excluded from future services, assessments, and liability of the irrigation district; and

(h) payment to the irrigation district representing a severance fee as provided in subsection (3).

(3) (a) Subject to subsection (3)(b), the severance fee that must be paid by an owner of a tract petitioning the district court to exclude a tract from future services, assessments, and liability of the irrigation district must be determined by adding the following:

(i) the present value of existing irrigation district debt apportioned to the petitioned tract; and

(ii) one-half of the present value of future irrigation district operation and maintenance costs apportioned to the petitioned tract for 20 years.

(b) The minimum severance fee is \$100.

(c) The department of natural resources and conservation shall adopt by rule the present value formula to be used in determining the severance fee. The rules must include:

- (i) direction on whether current or average assessment rates must be used; and
  - (ii) the treasury rate or interest rate to be used in the calculation.
- (d) The severance fee must be determined using the values applicable on the date of filing.
- (4) Upon filing the petition with the court, the petitioner shall mail a copy of the completed petition by certified mail to the irrigation district that is subject to the petition.
- (5) The petitioner shall file the petition, proof of mailing pursuant to subsection (4), and a \$20 fee with the clerk of the district court for the county in which the irrigation district was created.
- (6) Within 45 days of the date of the filing of the petition, the irrigation district may file an objection to the petition. To be valid, the objection must provide sufficient evidence that the provisions of subsection (1) do not apply.
- (7) If a valid objection is filed, the district court may hold a hearing if necessary to resolve the facts stated in the petition.
- (8) The court shall grant the petition to exclude the tract from future services, assessments, and liability:
- (a) if no objections are filed within 45 days of filing the petition; or
  - (b) upon determination of the district court that the petition is sufficient.
- (9) The district court shall forward to the irrigation district:
- (a) a copy of the order granting the exclusion; and
  - (b) the severance fee.
- (10) A petition granted pursuant to this section excludes the owner of the petitioned tract from:
- (a) irrigation district services, assessments, and liability;
  - (b) holding an office on the district board;
  - (c) participating in future district administrative matters; and
  - (d) objecting to a petition by the district to remove the acreage from the district boundaries as provided in 85-7-1802.
- (11) Once a petition is granted, services, assessments, administrative fees, miscellaneous fees, and charges may not be collected from the owner of the petitioned tract and the owner is exempt from future liability of the district.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 85, chapter 7, part 21, and the provisions of Title 85, chapter 7, part 21, apply to [section 1].

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

**Section 5. Termination.** [This act] terminates December 31, 2007.

Approved April 15, 2003

**CHAPTER NO. 348**

[HB 524]

AN ACT PROVIDING FOR LICENSURE OF AN OUTDOOR BEHAVIORAL PROGRAM THAT ACCEPTS PUBLIC FUNDING; AMENDING SECTION 50-5-101, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 50-5-101, MCA, is amended to read:

**“50-5-101. Definitions.** As used in parts 1 through 3 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) “Accreditation” means a designation of approval.

(2) “Adult day-care center” means a facility, freestanding or connected to another health care facility, that provides adults, on a regularly scheduled basis, with the care necessary to meet the needs of daily living but that does not provide overnight care.

(3) (a) “Adult foster care home” means a private home or other facility that offers, except as provided in 50-5-216, only light personal care or custodial care to four or fewer disabled adults or aged persons who are not related to the owner or manager of the home by blood, marriage, or adoption or who are not under the full guardianship of the owner or manager.

(b) As used in this subsection (3), the following definitions apply:

(i) “Aged person” means a person as defined by department rule as aged.

(ii) “Custodial care” means providing a sheltered, family-type setting for an aged person or disabled adult so as to provide for the person’s basic needs of food and shelter and to ensure that a specific person is available to meet those basic needs.

(iii) “Disabled adult” means a person who is 18 years of age or older and who is defined by department rule as disabled.

(iv) (A) “Light personal care” means assisting the aged person or disabled adult in accomplishing such personal hygiene tasks as bathing, dressing, and hair grooming and supervision of prescriptive medicine administration.

(B) The term does not include the administration of prescriptive medications.

(4) “Affected person” means an applicant for a certificate of need, a health care facility located in the geographic area affected by the application, an agency that establishes rates for health care facilities, or a third-party payer who reimburses health care facilities in the area affected by the proposal.

(5) “Capital expenditure” means:

(a) an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or

(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.

(6) “Certificate of need” means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

(7) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.

(8) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of a disease or assessment of a medical condition.

(9) "College of American pathologists" means the organization nationally recognized by that name that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

(10) "Commission on accreditation of rehabilitation facilities" means the organization nationally recognized by that name that surveys rehabilitation facilities upon their requests and grants accreditation status to a rehabilitation facility that it finds meets its standards and requirements.

(11) "Comparative review" means a joint review of two or more certificate of need applications that are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.

(12) "Construction" means the physical erection of a health care facility and any stage of the physical erection, including groundbreaking, or remodeling, replacement, or renovation of an existing health care facility.

(13) "Critical access hospital" means a facility that is located in a rural area, as defined in 42 U.S.C. 1395ww(d)(2)(D), and that has been designated by the department as a critical access hospital pursuant to 50-5-233.

(14) "Department" means the department of public health and human services provided for in 2-15-2201.

(15) "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney diseases and includes freestanding hemodialysis units.

(16) "Federal acts" means federal statutes for the construction of health care facilities.

(17) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(18) (a) "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. ~~The term does not include offices of private physicians, dentists, or other physical or mental health care workers regulated under Title 37, including chemical dependency counselors.~~ The term includes chemical dependency facilities, critical access hospitals, end-stage renal dialysis facilities, health maintenance organizations, home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities, medical assistance facilities, mental health centers, outpatient



centers for primary care, outpatient centers for surgical services, rehabilitation facilities, residential care facilities, and residential treatment facilities.

*(b) The term does not include offices of private physicians, dentists, or other physical or mental health care providers regulated under Title 37, including chemical dependency counselors.*

(19) "Health maintenance organization" means a public or private organization that provides or arranges for health care services to enrollees on a prepaid or other financial basis, either directly through provider employees or through contractual or other arrangements with a provider or group of providers.

(20) "Home health agency" means a public agency or private organization or subdivision of the agency or organization that is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(21) "Home infusion therapy agency" means a health care facility that provides home infusion therapy services.

(22) "Home infusion therapy services" means the preparation, administration, or furnishing of parenteral medications or parenteral or enteral nutritional services to an individual in that individual's residence. The services include an educational component for the patient, the patient's caregiver, or the patient's family member.

(23) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component. The term includes:

(a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that meets all medicare certification regulations for freestanding inpatient hospice facilities; and

(b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that can house three or more hospice patients.

(24) (a) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals. Services provided may or may not include obstetrical care, emergency care, or any other service allowed by state licensing authority. A hospital has an organized medical staff that is on call and available within 20 minutes, 24 hours a day, 7 days a week, and provides 24-hour nursing care by licensed registered nurses. The term includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tubercular patients; ~~but~~

*(b) The term does not include critical access hospitals.*

(25) "Infirmiry" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmiry—A" provides outpatient and inpatient care;

(b) an "infirmiry—B" provides outpatient care only.

(26) "Intermediate developmental disability care" means the provision of nursing care services, health-related services, and social services for persons with developmental disabilities, as defined in 53-20-102, or for individuals with related problems.

(27) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(28) "Joint commission on accreditation of healthcare organizations" means the organization nationally recognized by that name that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.

(29) (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care, residential care, intermediate nursing care, or intermediate developmental disability care to a total of two or more individuals or that provides personal care.

(b) The term does not include community homes for persons with developmental disabilities licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; youth care facilities, licensed under 52-2-622; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals who do not require institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections.

(30) "Medical assistance facility" means a facility that meets both of the following:

(a) provides inpatient care to ill or injured individuals before their transportation to a hospital or that provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours unless a longer period is required because transfer to a hospital is precluded because of inclement weather or emergency conditions. The department or its designee may, upon request, waive the 96-hour restriction retroactively and on a case-by-case basis if the individual's attending physician, physician assistant-certified, or nurse practitioner determines that the transfer is medically inappropriate and would jeopardize the health and safety of the individual.

(b) either is located in a county with fewer than six residents a square mile or is located more than 35 road miles from the nearest hospital.

(31) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any combination of these services.

(32) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

(33) "Offer" means the representation by a health care facility that it can provide specific health services.

(34) (a) *"Outdoor behavioral program" means a program that provides treatment, rehabilitation, and prevention for behavioral problems that endanger the health, interpersonal relationships, or educational functions of a youth and that:*

*(i) serves either adjudicated or nonadjudicated youth;*

(ii) charges a fee for its services; and

(iii) provides all or part of its services in the outdoors.

(b) "Outdoor behavioral program" does not include recreational programs such as boy scouts, girl scouts, 4-H clubs, or other similar organizations.

~~(34)~~ (35) "Outpatient center for primary care" means a facility that provides, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients and that is not an outpatient center for surgical services.

~~(35)~~ (36) "Outpatient center for surgical services" means a clinic, infirmary, or other institution or organization that is specifically designed and operated to provide surgical services to patients not requiring hospitalization and that may include recovery care beds.

~~(36)~~ (37) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

~~(37)~~ (38) "Person" means an individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

~~(38)~~ (39) "Personal care" means the provision of services and care for residents who need some assistance in performing the activities of daily living.

~~(39)~~ (40) "Personal-care facility" means a facility in which personal care is provided for residents in either a category A facility or a category B facility as provided in 50-5-227.

~~(40)~~ (41) "Recovery care bed" means, except as provided in 50-5-235, a bed occupied for less than 24 hours by a patient recovering from surgery or other treatment.

~~(41)~~ (42) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

~~(42)~~ (43) "Resident" means an individual who is in a long-term care facility or in a residential care facility.

~~(43)~~ (44) "Residential care facility" means an adult day-care center, an adult foster care home, a personal-care facility, or a retirement home.

~~(44)~~ (45) "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

~~(45)~~ (46) "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to individuals under 21 years of age.

~~(46)~~ (47) "Retirement home" means a building or buildings in which separate living accommodations are rented or leased to individuals who use those accommodations as their primary residence.

~~(47)~~ (48) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

~~(48)~~ (49) "State health care facilities plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the governor and a statewide health coordinating council appointed by the director of the department.

~~(49)~~ (50) "Swing bed" means a bed approved pursuant to 42 U.S.C. 1395tt to be used to provide either acute care or extended skilled nursing care to a patient."

**Section 2. Licensure of outdoor behavioral programs — exemption.**

(1) The department shall provide for licensure of a qualified outdoor behavioral program that accepts public funding. An outdoor behavioral program that does not accept public funds or governmental contracts is exempt from licensure.

(2) The department shall develop administrative rules for licensure that must include program requirements, staff requirements, staff to youth ratios, staff training and health requirements, youth admission requirements, water and nutritional requirements, health care and safety, environmental requirements, infectious disease control, transportation, and evacuation. The department may accept accreditation by a nationally recognized accrediting or certifying body but may not require the accreditation.

**Section 3. Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 50, chapter 5, part 2, and the provisions of Title 50, chapter 5, part 2, apply to [section 2].

**Section 4. Effective date.** [This act] is effective July 1, 2003.

Approved April 15, 2003

## CHAPTER NO. 349

[HB 532]

AN ACT REVISING THE PROCEDURE FOR THE ELECTION OF DRAINAGE DISTRICT COMMISSIONERS; PROVIDING THAT IF THE NUMBER OF CANDIDATES IS EQUAL TO OR LESS THAN THE NUMBER OF POSITIONS TO BE ELECTED, THE ELECTION ADMINISTRATOR MAY CANCEL THE ELECTION; PROVIDING FOR A DECLARATION OF ELECTION BY ACCLAMATION; PROVIDING FOR AN APPOINTMENT TO FILL A POSITION IF THERE ARE NO CANDIDATES; AMENDING SECTION 85-8-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 85-8-302, MCA, is amended to read:

**"85-8-302. Election of commissioners — regular term of office.** (1) ~~The~~ *Except as provided in subsection (2), the regular election of commissioners shall* must be held annually in accordance with 13-1-104 and 13-1-401. The term of office of commissioners shall commence on the first Tuesday in May following their election. At the first regular election following the organization of a district and in districts organized and in existence on March 1, 1921, and ~~which that~~, on petition, have been divided into divisions, at the first regular election following

the date of the order making ~~such~~ the division, ~~there shall be elected~~ three commissioners *must be elected*, with one commissioner being elected from each division. ~~of which he~~ A commissioner must be an actual landowner *in the division in which the commissioner is elected*. One of the commissioners, to be determined by lot, shall hold office until the first Tuesday in May in the year following ~~his~~ election; another of the commissioners, to be determined by lot, shall hold office until the first Tuesday in May in the second year following ~~his~~ election; and the third ~~of the commissioners~~ commissioner shall hold office until the first Tuesday in May in the third year following ~~his~~ election. ~~Thereafter~~ *After the election of the initial commissioners*, one commissioner ~~shall~~ *must* be elected each year, ~~who~~ Commissioners shall hold office for a term of 3 years and until ~~his~~ a successor is elected and qualified. The person elected as a commissioner in each year to succeed the commissioner whose term is then expiring must be elected as a commissioner from the same division as the commissioner ~~whom he is to succeed~~ whose term expires.

(2) *If the number of candidates is equal to or less than the number of positions to be elected, the election administrator may cancel the election in accordance with 13-1-304. If an election is not held as provided in this subsection, the county governing body shall declare elected by acclamation the candidate who filed a nominating petition for the position. If no candidate filed a nominating petition for the position, the board of commissioners shall make an appointment to fill the position, and the term is the same as if the commissioner were elected.*

~~(2)~~(3) Each commissioner must be a resident of a county where a portion of the district lands is situated.”

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

Approved April 15, 2003

## CHAPTER NO. 350

[HB 17]

AN ACT MAKING EXPLOITATION OF AN OLDER PERSON OR A PERSON WITH A DEVELOPMENTAL DISABILITY A FELONY IF THE AMOUNT INVOLVED IS OVER \$1,000; AMENDING SECTIONS 52-3-803 AND 52-3-825, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 52-3-803, MCA, is amended to read:

**“52-3-803. Definitions.** As used in this part, the following definitions apply:

(1) “Abuse” means:

(a) the infliction of physical or mental injury; or

(b) the deprivation of food, shelter, clothing, or services necessary to maintain the physical or mental health of an older person or a person with a developmental disability without lawful authority. A declaration made pursuant to 50-9-103 constitutes lawful authority.

(2) “Department” means the department of public health and human services provided for in 2-15-2201.

(3) “Exploitation” means:

(a) the unreasonable use of an older person or a person with a developmental disability or of a power of attorney, conservatorship, or guardianship with regard to an older person or a person with a developmental disability to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of *or interest in* the person's money, assets, or property by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of permanently depriving the older person or person with a developmental disability of the ownership, use, benefit, or possession of *or interest in* the person's money, assets, or property;

(b) an act taken by a person who has the trust and confidence of an older person or a person with a developmental disability to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of *or interest in* the person's money, assets, or property by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of permanently depriving the older person or person with a developmental disability of the ownership, use, ~~or benefit of~~, *or possession of or interest in* the person's money, assets, or property.

(4) "Incapacitated person" has the meaning given in 72-5-101.

(5) "Long-term care facility" means a facility defined in 50-5-101.

(6) "Mental injury" means an identifiable and substantial impairment of a person's intellectual or psychological functioning or well-being.

(7) "Neglect" means the failure of a person who has assumed legal responsibility or a contractual obligation for caring for an older person or a person with a developmental disability or who has voluntarily assumed responsibility for the person's care, including an employee of a public or private residential institution, facility, home, or agency, to provide food, shelter, clothing, or services necessary to maintain the physical or mental health of the older person or the person with a developmental disability.

(8) "Older person" means a person who is at least 60 years of age. For purposes of prosecution under 52-3-825(2) or (3), the person 60 years of age or older must be unable to provide personal protection from abuse, sexual abuse, neglect, or exploitation because of a mental or physical impairment or because of frailties or dependencies brought about by advanced age.

(9) "Person with a developmental disability" means a person 18 years of age or older who has a developmental disability, as defined in 53-20-102.

(10) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function.

(11) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5."

**Section 2.** Section 52-3-825, MCA, is amended to read:

**"52-3-825. Penalties.** (1) Any person who purposely or knowingly fails to make a report required by 52-3-811 or discloses or fails to disclose the contents of a case record or report in violation of 52-3-813 is guilty of an offense and upon conviction is punishable as provided in 46-18-212.

(2) ~~Any individual~~ *An individual* who purposely or knowingly abuses, sexually abuses, or neglects, or exploits an older person or a person with a developmental disability is guilty of a misdemeanor and upon a first conviction ~~may 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. Upon a second or succeeding conviction, an individual is guilty of a misdemeanor and upon a first conviction may 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. Upon a second or subsequent conviction, the individual may be imprisoned for a term not to exceed 10 years and may be fined an amount not to exceed \$10,000, or both.~~

(3) (a) A person convicted of purposely or knowingly exploiting an older person or a person with a developmental disability in a case involving money, assets, or property in an amount of \$1,000 or less in value shall be fined not more than \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both. A person convicted of purposely or knowingly exploiting an older person or a person with a developmental disability in a case involving money, assets, or property in an amount of more than \$1,000 in value shall be fined not more than \$50,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both.

(b) For purposes of prosecution under subsection (3)(a) in a case involving the same transaction or in a case prosecuted pursuant to a common scheme, the amounts may be aggregated in determining the value involved."

**Section 3. Coordination instruction.** If Senate Bill No. 444 and [this act] are both passed and approved, then [section 10 of Senate Bill No. 444], amending 52-3-825, is void.

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved April 16, 2003

## CHAPTER NO. 351

[HB 76]

AN ACT ESTABLISHING CERTIFIED REGIONAL DEVELOPMENT CORPORATIONS AND TREASURE COMMUNITIES; REDIRECTING THE STATUTORY APPROPRIATION TO PROVIDE FUNDING TO CERTIFIED REGIONAL DEVELOPMENT CORPORATIONS; ESTABLISHING THE ECONOMIC DEVELOPMENT ADVISORY COUNCIL; PROVIDING FOR APPOINTMENT AND DUTIES OF ADVISORY COUNCIL; ABOLISHING THE MICROBUSINESS ADVISORY COUNCIL; AMENDING SECTIONS 15-35-108, 17-6-403, 90-1-116, AND 90-8-201, MCA; REPEALING SECTION 17-6-411, MCA; AND PROVIDING EFFECTIVE DATES.

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

**Section 1. Economic development advisory council.** (1) There is an economic development advisory council.

(2) The council is composed of up to 19 members appointed as follows:

(a) 15 members appointed by the governor to include:

(i) the director of the department of commerce;

(ii) the chief business development officer provided for in 2-15-219, who serves as presiding officer of the council;

(iii) one member from a Montana tribal government who represents a tribal economic development organization; and

(iv) up to 12 public members representing each geographic region covered by each of the regional development corporations certified by the department pursuant to 90-1-116; and

(b) (i) two representatives, including one from each party, appointed by the speaker of the house; and

(ii) two senators, including one from each party, appointed by the committee on committees.

(3) The governor is encouraged to appoint to the initial council two individuals who were members of the microbusiness advisory council immediately prior to its being abolished.

(4) (a) Except as provided in subsection (4)(b), members of the council shall serve staggered 3-year terms subject to replacement at the discretion of the governor. The governor shall designate five of the initial members to serve 1-year terms and five of the initial members to serve 2-year terms.

(b) Legislative members must be appointed on or before the 10th day of each regular session of the legislature and shall serve until the convening of the next regular session of the legislature. If a vacancy on the council occurs during a legislative interim, that vacancy must be filled in the same manner as the original appointment.

(5) Members of the council, other than legislative members, are not entitled to compensation for their services except for reimbursement of expenses as provided in 2-18-501 through 2-18-503. Legislative members of the council are entitled to compensation pursuant to 5-2-302, which must be paid by the department of commerce.

(6) The council shall:

(a) advise the department concerning the distribution of funds to certified regional development corporations for business development purposes in accordance with 90-1-116 and this section;

(b) advise the department regarding the creation, operation, and maintenance of the microbusiness finance program and the policies and operations affecting the certified microbusiness development corporations;

(c) advise the governor and the department on significant matters concerning economic development in Montana;

(d) prescribe allowable administrative expenses for which economic development funds may be used by certified regional development corporations; and

(e) encourage certified regional development corporations to promote economic development on Indian reservations in their regions.

(7) The council is allocated to the department of commerce for administrative purposes only as provided in 2-15-121.

**Section 2.** Section 15-35-108, MCA, is amended to read:

**“15-35-108. (Temporary) Disposal of severance taxes.** Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The



trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) For the fiscal year ending June 30, 2003, the amount of 10% and for fiscal years beginning on or after July 1, 2003, the amount of 12% of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) For the fiscal year ending June 30, 2003, the amount of 6.01% and for fiscal years beginning on or after July 1, 2003, the amount of 7.75% must be credited to an account in the state special revenue fund to be allocated by the legislature for local impacts, provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) For fiscal years beginning on or after July 1, 2003, the amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) For fiscal years beginning on or after July 1, 2003, the amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) (a) Subject to subsections (7)(b) and (7)(c), all other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state.

(b) The interest income from \$140 million of the coal severance tax permanent fund that is deposited in the general fund is statutorily appropriated, as provided in 17-7-502, on an annual basis as follows:

(i) \$65,000 to the cooperative development center;

(ii) ~~for the fiscal year beginning July 1, 2001, \$1.25 million, for the fiscal year beginning July 1, 2002, \$925,000, and~~ for fiscal years beginning on or after July 1, 2003, \$1.25 million for the growth through agriculture program provided for in Title 90, chapter 9;

(iii) to the department of commerce:

(A) \$125,000 for a small business development center;

(B) \$50,000 for a small business innovative research program;

(C) ~~except for the fiscal year beginning July 1, 2002,~~ \$425,000 for certified ~~communities regional development corporations;~~

(D) \$200,000 for the Montana manufacturing extension center at Montana state university-Bozeman; and

(E) \$300,000 for export trade enhancement;

(iv) \$175,000 to the office of economic development for business recruitment and retention; and

(v) \$600,000 to the department of administration for the purpose of reimbursing tax increment financing industrial districts as provided in 7-15-4299. Reimbursement must be made to qualified districts on a proportional basis to the loss of taxable value as a result of Chapter 285, Laws of 1999, and as documented by the department of revenue. This documentation must be provided to the budget director and to the legislative fiscal analyst. The reimbursement may not be used to pay debt service on tax increment bonds to the extent that the bonds are secured by a guaranty, a letter of credit, or a similar arrangement provided by or on behalf of an owner of property within the district.

(c) ~~For the fiscal year beginning July 1, 2001, there is transferred from the interest income referred to in subsection (7)(b) \$4.85 million to the research and commercialization state special revenue account created in 90-3-1002. For the fiscal year beginning July 1, 2002, there is transferred from the interest income referred to in subsection (7)(b) \$3.165 million to the research and commercialization state special revenue account created in 90-3-1002. Beginning July 1, 2003, there is transferred annually from the interest income referred to in subsection (7)(b) \$3.65 million to the research and commercialization state special revenue account created in 90-3-1002. (Terminates June 30, 2005—sec. 10(2), Ch. 10, Sp. L. May 2000; sec. 8(1), Ch. 12, Sp. L. August 2002.)~~

**15-35-108. (Effective July 1, 2005) Disposal of severance taxes.**

Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) Twelve percent of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 7.75% must be credited to an account in the state special revenue fund to be allocated by the legislature for local impacts, provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic

projects. Income from this trust fund account, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) All other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state."

**Section 3.** Section 17-6-403, MCA, is amended to read:

**"17-6-403. Definitions.** As used in this part, the following definitions apply:

~~(1) "Certified community lead organization" means an organization that has sponsored community certification under the certified communities program of the department.~~

~~(2)~~(1) "Certified microbusiness development corporation" means a microbusiness development corporation certified pursuant to 17-6-408.

~~(3) "Council" means the microbusiness advisory council established in 17-6-411.~~

~~(4)~~(2) "Department" means the department of commerce provided for in 2-15-1801.

~~(5)~~(3) "Development loan" means money loaned to a certified microbusiness development corporation by the department for the purpose of making microbusiness loans under the provisions of this part.

~~(6)~~(4) "Microbusiness development corporation" means a nonprofit corporation organized and existing under the laws of the state to provide training, technical assistance, and access to capital for the startup or expansion of qualified microbusinesses.

~~(7)~~(5) "Microbusiness loan" means a loan made from or guaranteed by a revolving loan fund contributed to by the microbusiness finance program.

~~(8)~~(6) "Program" means the microbusiness finance program established in 17-6-406.

~~(9)~~(7) "Qualified microbusiness" means a business enterprise located in the state that:

(a) produces goods or provides services and has fewer than 10 full-time equivalent employees and annual gross revenues of less than \$500,000; or

(b) produces energy using an alternative renewable energy source as defined in 90-4-102.

~~(10)~~(8) "Revolving loan fund" means a fund required to be established by a certified microbusiness development corporation that receives a development loan."

**Section 4.** Section 90-1-116, MCA, is amended to read:

**"90-1-116. State matching funds program for economic development — distribution of proceeds — criteria for grants — local economic development matching funds.** (1) As used in this section, the following definitions apply:

(a) ~~"Certified community lead organization" means the entity that has been endorsed by resolution of a local governing body or a tribal government, as defined in 90-6-701(3)(c), and that meets and maintains requirements for certification established by the department~~ "Certified regional development corporation" means a private, nonprofit corporation that has been designated by

*the department through a competitive process to manage and administer funds and programs for the department on a regional basis.*

*(b) "Council" means the economic development advisory council established in [section 1].*

~~(b)(c)~~ *"Department" means the department of commerce provided for in 2-15-1801.*

*(d) "Treasure community" means a community that meets and maintains requirements for certification established by the department and administered by the certified regional development corporation.*

*(2) The department shall create a program to provide state funds to match local economic development funds and to fund ~~the certified communities program~~ up to 12 certified regional development corporations. The provision of state matching funds is contingent upon specific appropriations to the department for that purpose. ~~The department shall distribute the funds in the following manner:~~*

~~(a) 91% to certified community lead organizations, in the form of assistance grants;~~

~~(b) 8% to the department for administration of the certified communities program; and~~

~~(c) 1% to the department for certification assistance for noncertified communities. If there are no requests for certification assistance, the 1% allocation may be used by the department for administration of the certified communities program.~~

*(3) An assistance grant to a certified community lead organization is based on an annual per capita payment for the area served by the organization, according to its population in the last completed federal census. The grant may not exceed \$75,000 and may not be less than \$3,000 a year regional development corporation will be made based on rules adopted by the department for the state matching funds program. The rules for distribution of funds must include consideration of:*

*(a) the size of the geographic area represented by the certified regional development corporation;*

*(b) the number of communities served by the certified regional development corporation;*

*(c) the population served by the certified regional development corporation; and*

*(d) the services offered by the certified regional development corporation.*

*(4) To be eligible to receive a grant, a certified ~~community lead organization~~ regional development corporation:*

*(a) must be designated as the ~~lead organization~~ certified regional development corporation by the ~~local governing body~~ department;*

*(b) shall maintain department requirements for certification;*

*(c) shall match each \$1 of the grant with \$1 raised from public or private sources; ~~and~~*

*(d) shall administer the treasure community designation and reporting process for the communities and counties in the region;*

(e) shall encourage and organize full participation in regional economic development activities, meetings, projects, and planning by the treasure communities in the region; and

~~(d)(f) shall participate in regional meetings of certified communities deliver services and resources to the citizens, businesses, and treasure communities throughout the region.~~

(5) Grants under this section must be used to conduct economic development programs consistent with strategic plans that are adopted by the certified regional development corporations and the treasure communities in the region and that are filed with the department.

~~(6) The department shall use its portion of the proceeds to:~~

~~(a) administer the certified communities program;~~

~~(b) assist noncertified communities in seeking certification; and~~

~~(c) organize and conduct regional meetings of certified communities."~~

**Section 5.** Section 90-8-201, MCA, is amended to read:

**"90-8-201. Certification of Montana capital companies and small business investment capital companies.** (1) The department shall certify Montana small business investment capital companies, and from time to time, the department shall certify Montana capital companies. A company seeking to be certified as a Montana capital company or as a Montana small business investment capital company shall make written application to the department on forms provided by the department. The application must contain the information required by 90-8-204 and other information that the department requires.

(2) The application must show that the applicant's purpose is to increase the general economic welfare of the state of Montana by:

(a) making investment capital available to businesses in Montana; and

(b) allowing for investment of up to 25% of its capital base in businesses outside Montana if there is a substantial likelihood that the investment will produce a qualified investment in Montana.

(3) Certifiable applicants include but are not limited to local and community development corporations, small business administration certified development companies, and small business investment companies.

(4) Certification is a prerequisite to and must be completed before seeking designation as a qualified capital company or as a qualified Montana small business investment capital company.

(5) To be eligible for certification under this section as a Montana small business investment capital company, the applicant shall commit to:

(a) accumulating private capital with the intention of being licensed as a small business investment corporation by the United States small business administration as provided in Title III of the Small Business Investment Act of 1958, as amended, and as implemented under 13 CFR 107;

(b) targeting its investments as a small business investment capital company toward commercialization projects emerging from centers of excellence and entrepreneurship, federal laboratories, the federal small business innovative research program, the federal cooperative research and development agreement program, Montana university system research and

development, small business incubators, community development block grant programs, and projects emerging from economic development programs of Montana certified ~~communities~~ *regional development corporations*, with the objective of providing significant investment opportunities in an area where economic development capital is limited;

(c) considering investment opportunities originating in any Montana county; and

(d) adopting investment guidelines that ensure that not less than 10% of its available capital is invested in counties with populations of 20,000 or less.”

**Section 6. Repealer.** Section 17-6-411, MCA, is repealed.

**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 band of Chippewa.

**Section 8. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 2, chapter 15, part 18, and the provisions of Title 2, chapter 15, part 18, apply to [section 1].

**Section 9. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 2] is effective July 1, 2003.

Approved April 16, 2003

## CHAPTER NO. 352

[HB 105]

AN ACT GENERALLY REVISING, UPDATING, AND CLARIFYING PROVISIONS GOVERNING VEHICLE OPERATING REQUIREMENTS; ALLOWING A SLOW-MOVING VEHICLE TO TURN OFF OF A ROADWAY AT AREAS OTHER THAN THOSE DESIGNATED FOR THAT PURPOSE; MAKING CONSISTENT REFERENCES TO VARIOUS TYPES OF HIGHWAYS; REQUIRING OTHER VEHICLES TO YIELD THE RIGHT-OF-WAY TO VEHICLES ENGAGED IN MOBILE HIGHWAY MAINTENANCE; CLARIFYING THAT LOCAL AUTHORITIES HAVE THE OPTION OF DESIGNATING NO-PASSING ZONES; CLARIFYING THAT PROVISIONS GOVERNING NO-PASSING ZONES DO NOT APPLY WHEN A VEHICLE IS MAKING CERTAIN TURNING MOVEMENTS; PROVIDING FOR AND DEFINING ROUNDABOUTS; ALLOWING A PERSON TO CROSS DOUBLE YELLOW LINES IF TURNING INTO A PRIVATE ROAD OR DRIVEWAY; PROHIBITING A PERSON FROM PARKING A MOTOR VEHICLE IN A BICYCLE LANE; REGULATING TURNING WHERE A SPECIAL LANE HAS BEEN DESIGNATED FOR MAKING LEFT TURNS; PROHIBITING THE OPERATOR OF A MOTOR VEHICLE FROM INTERFERING WITH A BICYCLIST; MODIFYING THE PROVISIONS FOR STOPPING AT AND CROSSING RAILROAD GRADE CROSSINGS; ALLOWING A MOTORCYCLIST TO DRIVE WITHOUT THE HEADLAMP LIGHTED IF THE MOTORCYCLE IS BEING DRIVEN TO A REPAIR FACILITY; INCREASING THE FINE FOR THROWING CONTAINERS OF URINE OR FECES ON A HIGHWAY TO \$1,000; PROHIBITING SHOOTING A FIREARM FROM OR ACROSS THE RIGHT-OF-WAY OF ANY HIGHWAY; PROVIDING FOR THE ESTABLISHMENT OF SCHOOL CROSSING

GUARDS; AMENDING SECTIONS 61-8-301, 61-8-303, 61-8-311, 61-8-312, 61-8-321, 61-8-323, 61-8-324, 61-8-325, 61-8-326, 61-8-327, 61-8-328, 61-8-329, 61-8-330, 61-8-331, 61-8-332, 61-8-333, 61-8-334, 61-8-336, 61-8-338, 61-8-340, 61-8-341, 61-8-342, 61-8-343, 61-8-344, 61-8-345, 61-8-346, 61-8-347, 61-8-348, 61-8-349, 61-8-350, 61-8-354, 61-8-355, 61-8-356, 61-8-359, 61-8-360, 61-8-361, 61-8-362, 61-8-363, 61-8-364, 61-8-365, 61-8-368, 61-8-369, 61-8-715, 61-9-402, 61-9-416, AND 61-9-431, MCA; AND REPEALING SECTION 61-8-315, MCA.

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

**Section 1.** Section 61-8-301, MCA, is amended to read:

**“61-8-301. Reckless driving — reckless endangerment of highway worker.** (1) A person commits the offense of reckless driving if the person:

(a) operates a vehicle in willful or wanton disregard for the safety of persons or property;

~~(b) operates a vehicle in willful or wanton disregard for the safety of persons or property while fleeing or attempting to flee from or elude a peace officer who is lawfully in pursuit and whose vehicle is at the time in compliance with the requirements of 61-9-402; or~~

~~(c)~~(b) operates a vehicle in willful or wanton disregard for the safety of persons or property while passing, in either direction, a school bus that has stopped and is displaying the visual flashing red signal, as provided in 61-8-351 and 61-9-402. This subsection~~(4)~~(e) (1)(b) does not apply to situations described in 61-8-351(5).

(2) ~~Each~~ A municipality ~~in this state~~ may enact and enforce 61-8-715 and subsection (1) of this section as an ordinance.

(3) A person who is convicted of the offense of reckless driving *or of reckless endangerment of a highway worker* is subject to the penalties provided in 61-8-715.

(4) (a) *A person commits the offense of reckless endangerment of a highway worker if the person purposely, knowingly, or negligently drives a motor vehicle in a highway construction zone in a manner that endangers persons or property or if the person purposely removes, ignores, or intentionally strikes an official traffic control device in a construction zone for reasons other than:*

(i) *avoidance of an obstacle;*

(ii) *an emergency; or*

(iii) *to protect the health and safety of an occupant of the vehicle or of another person.*

(b) *As used in this section:*

(i) *“construction zone” has the same meaning as is provided in 61-8-314; and*

(ii) *“highway worker” means an employee of the department of transportation, a local authority, a utility company, or a private contractor.”*

**Section 2.** 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, 61-8-312, and subsection (2) of this section, the speed limit for vehicles traveling:

(a) on a federal-aid interstate highway outside an urbanized area of 50,000 population or more is 75 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) The speed limit for vehicles traveling on U.S. highway 93 between the Canadian and Idaho borders is 65 miles an hour at all times. The speed limit imposed by this subsection ceases to be effective if U.S. highway 93 is upgraded to a continuous four-lane highway.

(3) 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.

(4) Subject to the maximum speed limits set forth in subsections (1) and (2), 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.

(5) ~~When no~~ *Except when* a special hazard exists that requires lower speed for compliance with subsections (1) and (2) subsection (4), the speed of a vehicle ~~not in excess of the limits specified in this section and in 61-8-312 or established as authorized in 61-8-309 through 61-8-311 and 61-8-313 is lawful, but a speed in excess of 25 miles an hour in an urban district is unlawful~~ *are the maximum lawful speeds allowed.*

(6) "Daytime" means from one-half hour before sunrise to one-half hour after sunset. "Nighttime" means at any other hour.

(7) 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."

**Section 3.** Section 61-8-311, MCA, is amended to read:

**"61-8-311. Minimum speed regulations.** (1) A person may not drive a motor vehicle at a speed slow enough to impede or block the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law.

(2) On a two-lane highway where passing is unsafe because of *oncoming* traffic ~~in the opposite direction~~ or other conditions, *the operator of* a slow-moving vehicle, ~~including a passenger vehicle,~~ behind which four or more vehicles are formed in line shall turn off the roadway at the nearest ~~place designated as a turnout by signs erected by the authority having jurisdiction over the highway or wherever sufficient area for a~~ *where a sufficient and safe turnout exists* in order to permit the vehicles following it to proceed. If the shoulder of the highway to the right of the ~~overtaken slow-moving~~ vehicle is wide enough and is in a condition allowing safe travel, the ~~driver operator of the overtaken slow-moving~~ vehicle may drive onto the shoulder and proceed at a safe speed until passed. As used in this section, a slow-moving vehicle is one ~~which~~ *that* is proceeding at a rate of speed less than the normal flow of traffic at the particular time and place. The department of transportation is authorized to designate and construct ~~such~~ *such* turnouts and to erect ~~signs~~ *official traffic control devices* at appropriate places advising motorists of this statute.



(3) If the department of transportation or local authorities within their respective jurisdictions determine on the basis of an engineering and traffic investigation that slow speeds on any part of a highway ~~consistently~~ impede the normal and reasonable movement of traffic, the commission or the local authority may set a minimum speed limit below which a person may not ~~drive~~ *operate* a vehicle except when necessary for safe operation or in compliance with law.”

**Section 4.** Section 61-8-312, MCA, is amended to read:

**“61-8-312. Special speed limitations on trucks, truck tractors, and motor-driven cycles.** (1) Except as provided in 61-8-303, 61-8-309, 61-8-310, and subsection (2) of this section, the speed limit for a truck or truck tractor of more than 1 ton “manufacturer’s rated capacity” traveling on:

(a) ~~completed sections of a federal-aid interstate highway~~ is 65 miles an hour; and

(b) ~~four-lane divided highways and completed sections of primary and secondary highways~~ *any other public highway* is 60 miles an hour during the daytime and 55 miles an hour during the nighttime as those terms are defined in 61-8-303.

(2) Except as provided in 61-8-303, 61-8-309, and 61-8-310, the speed limit for a vehicle subject to a term permit under 61-10-124(2)(d) or a truck-trailer-trailer or truck tractor-semitrailer-trailer-trailer combination of vehicles subject to special permits under 61-10-124(4) is 55 miles an hour unless otherwise stated in the permit.

(3) A person may not operate a motor-driven cycle at any time mentioned in 61-9-201 at a speed greater than 35 miles an hour unless the motor-driven cycle is equipped with a headlamp or lamps that are adequate to reveal a person or vehicle at a distance of 300 feet ahead.”

**Section 5. Right-of-way for vehicles engaged in mobile highway maintenance.** The operator of a vehicle shall yield the right-of-way to an authorized vehicle that is engaged in highway maintenance activities when the authorized vehicle is displaying flashing lights that meet the requirements of the department of transportation.

**Section 6.** 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 ~~shall~~ *must* be ~~driven~~ *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 ~~such~~ *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 ~~thereon~~ *or on a divided roadway*;

(d) upon a roadway designated ~~and signposted~~ *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.*

(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.

~~(2)(3) Upon all roadways any~~ A vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing ~~shall~~ must be ~~driven~~ 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."

**Section 7.** Section 61-8-323, MCA, is amended to read:

**"61-8-323. Overtaking vehicle on left.** The following rules govern the overtaking and passing of vehicles proceeding in the same direction, subject to the limitations, exceptions, and special rules provided in this ~~part~~ chapter:

(1) The ~~driver~~ operator of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left of the other vehicle at a safe distance and may not again drive to the right side of the roadway until safely clear of the overtaken vehicle.

(2) Except when overtaking and passing on the right is permitted, the ~~driver~~ operator of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle upon an audible signal or the use of signal lamps, as provided in 61-9-218, and may not increase the speed of the vehicle until completely passed by the overtaking vehicle. When giving way to the right on a two-lane highway, the ~~driver~~ operator of the vehicle being overtaken may travel upon the shoulder at a safe speed until passed if the shoulder is wide enough and is in a condition allowing safe travel."

**Section 8.** Section 61-8-324, MCA, is amended to read:

**"61-8-324. When overtaking Overtaking vehicle on right is permitted.** (1) The ~~driver~~ operator of a vehicle may overtake and pass upon the right of another vehicle only under the following conditions:

- (a) when the vehicle overtaken is making or about to make a left turn; or
- (b) upon a ~~street or highway~~ roadway with unobstructed pavement ~~not occupied by parked vehicles~~ of sufficient width for two or more ~~lines~~ lanes of moving vehicles moving lawfully in ~~each~~ the direction being traveled by the overtaking vehicle;
- (c) ~~upon a one way street, or upon any roadway on which traffic is restricted to one direction of movement, where the roadway is free from obstructions and of sufficient width for two or more lines of moving vehicles.~~

(2) The ~~driver~~ operator of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting ~~such movement in safety safe movement. In no event shall such~~ The movement may not be made by driving off the pavement or main-traveled portion of the roadway."

**Section 9.** Section 61-8-325, MCA, is amended to read:

**"61-8-325. Limitations on overtaking on the left.** (1) ~~No~~ A vehicle ~~shall~~ may not be driven to the left side of the center of the roadway in overtaking and passing another vehicle proceeding in the same direction unless ~~such~~ the left side is clearly visible and is free of oncoming traffic for a sufficient distance

ahead to permit ~~such~~ the overtaking and passing to be completely made without interfering with the safe operation of any vehicle approaching from the opposite direction or any vehicle overtaken. ~~In every event the overtaking vehicle must return to the right hand side of the roadway before coming within 100 feet of any vehicle approaching from the opposite direction.~~

(2) ~~No~~ A vehicle ~~shall at any time~~ *may not* be driven to the left side of the roadway under the following conditions:

(a) when approaching the crest of a grade or upon a curve in the highway where the driver's view is obstructed within ~~such~~ a distance ~~as to create that creates~~ a hazard in the event *that* another vehicle might approach from the opposite direction;

(b) when approaching within 100 feet of or traversing any intersection or railroad grade crossing, *unless otherwise indicated by an official traffic control device; or*

(c) when the view is obstructed upon approaching within 100 feet of any bridge, viaduct, or tunnel.

(3) ~~The foregoing limitations shall~~ *provided in this section do not apply upon a one-way roadway.*

**Section 10.** Section 61-8-326, MCA, is amended to read:

**"61-8-326. No-passing zones.** (1) The department of transportation *and local authorities* may determine those portions of a highway *in their respective jurisdictions* where overtaking and passing or driving to the left of the center of the roadway would be especially hazardous, and ~~it they may by appropriate signs or markings~~ *official traffic control devices on the roadway highway* indicate the beginning and end of these zones. When the ~~signs or markings~~ *official traffic control devices* are in place and clearly visible to an ordinarily observant person, ~~every driver an operator~~ *of a vehicle shall obey the directions of those signs devices.*

(2) Where ~~signs or markings~~ *official traffic control devices* are in place to define a no-passing zone as set forth in subsection (1) ~~a driver an operator of a vehicle~~ may not drive on the left side of the roadway within the no-passing zone or on the left side of a pavement striping designed to mark the no-passing zone throughout its length.

(3) *The provisions of this section do not apply under the conditions provided in 61-8-321(1) or to the operator of a vehicle that is turning left into or from an alley, private road, or driveway.*

**Section 11.** Section 61-8-327, MCA, is amended to read:

**"61-8-327. One-way roadways, and rotary traffic islands, and roundabouts.** (1) The department of transportation *or a local authority* may designate a highway, ~~or a separate roadway, part of a roadway, or specific lanes~~ under its ~~jurisdiction~~ *respective jurisdiction* for one-way traffic and shall erect ~~appropriate signs~~ *official traffic control devices* giving notice of that designation.

(2) Upon a roadway designated ~~and signposted by official traffic control devices~~ for one-way traffic a vehicle may be driven only in the direction designated.

(3) A vehicle passing around a rotary traffic island *or a roundabout* may be driven only to the right of ~~such~~ *the island or the center of the roundabout.*

(4) *For the purposes of this section, a "roundabout" is a circular intersection where all entering traffic must yield to the vehicles within the intersection."*

**Section 12.** Section 61-8-328, MCA, is amended to read:

**"61-8-328. Driving on roadways laned for traffic.** Whenever a roadway has been divided into two or more clearly marked lanes for traffic, the following rules, in addition to all other consistent rules, apply:

(1) A vehicle must be ~~driven~~ operated as nearly as practicable entirely within a single lane and may not be moved from the lane until the ~~driver~~ operator has first ascertained that the movement can be made with safety.

(2) Upon a roadway that is divided into three lanes *and that provides for two-way movement of traffic*, a vehicle may not be ~~driven~~ operated in the center lane except:

(a) when overtaking and passing another vehicle ~~where the roadway is clearly visible traveling in the same direction where passing is allowed and where the center lane is clear of traffic within a safe distance;~~

~~(b) in preparation for a left turn; or~~

~~(c) when the center lane is at the time allocated exclusively to traffic moving in the direction that the vehicle is proceeding and is signposted to give notice of the allocation is designated by official traffic control devices.~~

(3) Official ~~signs~~ traffic control devices may be erected directing ~~slow moving specified~~ traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the roadway. ~~Drivers~~ Operators of vehicles shall obey the directions of every official ~~sign~~ traffic control device that designates use of specific lanes.

(4) A person may turn a vehicle left across a lane marked with two yellow lines into a public or private parking lot, *private road, private driveway*, or a roadway if the turn can be made safely and if the person does not hinder the flow of oncoming traffic.

(5) *Official traffic control devices may be installed that prohibit the changing of lanes on sections of a roadway, and operators of vehicles shall obey the directions of those devices.*

(6) *A motor vehicle may not be driven or parked in a bicycle lane that is signed and delineated as a bicycle lane by official traffic control devices."*

**Section 13.** Section 61-8-329, MCA, is amended to read:

**"61-8-329. Following too closely.** (1) The driver of a motor vehicle ~~shall~~ may not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of ~~such~~ the vehicles and the traffic upon and the condition of the ~~highway~~ roadway.

~~(2) The driver of any truck tractor, truck, or motor vehicle drawing another vehicle when traveling upon a roadway outside of a business or residence district and which is following another truck tractor, truck, or motor vehicle drawing another vehicle shall, whenever conditions permit, leave sufficient space so that an overtaking vehicle may enter and occupy such space without danger, except that this shall not prevent a truck tractor, truck, or motor vehicle drawing another vehicle from overtaking and passing any like vehicle or other vehicle.~~

~~(3)~~(2) ~~Motor vehicles~~ A motor vehicle being driven upon ~~any~~ a roadway outside of a business or residence district, *including* in a caravan or motorcade,

whether or not towing other vehicles, ~~shall must be so~~ operated ~~as to allow in a manner that allows~~ sufficient space between each ~~such~~ vehicle or combination of vehicles ~~so as to enable any other vehicle to enter and occupy such the space without danger. This provision shall does not apply to funeral processions."~~

**Section 14.** Section 61-8-330, MCA, is amended to read:

**"61-8-330. Driving on divided highways.** ~~Whenever any (1) Where a highway has been divided into two or more roadways by leaving an intervening a space delineated by two double yellow lines or two yellow lines with a crosshatch pattern or by a physical barrier or a clearly indicated dividing section so that is constructed as to impede in a way that impedes vehicular traffic, every a vehicle shall may be driven only upon the right-hand roadway and no unless directed or permitted by official traffic control devices or police officers to use another roadway.~~

(2) A vehicle ~~shall may not~~ be driven over, across, or within ~~any such dividing a space, barrier, or section described in subsection (1) except through an opening in such the physical barrier or dividing section or space or at an established crossover or intersection established by unless specifically prohibited by a public authority."~~

**Section 15.** Section 61-8-331, MCA, is amended to read:

**"61-8-331. Restricted and controlled access.** (1) ~~No A person shall drive may not operate a vehicle onto or from any a controlled-access roadway except at such entrances and exits as that are established by public authority.~~

(2) On ~~any a controlled-access highway or facility it is unlawful for any a person to may not:~~

(a) ~~drive operate~~ a vehicle over, upon, or across ~~any a~~ curb, central dividing section, or other separation or dividing line;

(b) make a left turn or a semicircular or U-turn except through an opening provided for that purpose in the dividing curb, section, separation, or line *if travel through the opening is not prohibited by an official traffic control device,*

(c) ~~drive any operate~~ a vehicle except in the proper lane, in the proper direction, and to the right of the central dividing curb, separation, section, or line;

(d) ~~drive any operate~~ a vehicle from a local service road except through an opening provided for that purpose in the dividing curb, section, or line which separates the service road from the highway or facility;

(e) construct, operate, or maintain ~~any a~~ road or private driveway connecting with the highway or facility without first obtaining permission in writing from the ~~highway public authority having jurisdiction and, with the exception of an interstate highway, from the local governing body."~~

**Section 16.** Section 61-8-332, MCA, is amended to read:

**"61-8-332. Restrictions on use of controlled-access roadway.** (1) The department of transportation may by rule and local authorities may by ordinance *regulate or* prohibit the use of a controlled-access highway under their respective jurisdictions by ~~pedestrians, bicycles, or other nonmotorized traffic or by a person operating a motor-driven cycle any class or kind of traffic that is found to be incompatible with the normal and safe movement of traffic or by any vehicle.~~

(2) The department or the local authority ~~which~~ *that* adopts the prohibitory regulation shall erect and maintain official ~~signs~~ *traffic control devices* on the controlled-access ~~roadway~~ *highway* on which these regulations are applicable. ~~It is unlawful for a~~ A person ~~to~~ *may not* violate the restrictions stated on ~~these signs~~ *the official traffic control devices.*"

**Section 17.** Section 61-8-333, MCA, is amended to read:

**"61-8-333. Required position and method of turning at intersections — bicycle turn procedures — signs.** (1) The ~~driver~~ *operator* of a vehicle intending to turn at an intersection shall do so as follows:

(a) ~~Right turns.~~ Both the approach for a right turn and a right turn ~~shall~~ *must* be made as close as practicable to the right-hand curb or edge of the roadway.

(b) ~~Left turn on two-way roadways.~~ At ~~any~~ *an* intersection where traffic is permitted to move in both directions on each roadway entering the intersection, an approach for a left turn ~~shall~~ *must* be made in that portion of the right half of the roadway nearest the center line ~~thereof of the roadway~~ and by passing to the right of ~~such~~ *the* center line where it enters the intersection. ~~and after~~ *After* entering the intersection, the left turn ~~shall~~ *must* be made so as to leave the intersection to the right of the center line of the roadway being entered. Whenever practicable the left turn ~~shall~~ *must* be made in that portion of the intersection to the left of the center of the intersection.

(c) ~~Left turns on other than two-way roadways.~~ At ~~any~~ *an* intersection where traffic is restricted to one direction on one or more of the roadways, the ~~driver~~ *operator* of a vehicle intending to turn left ~~at any such intersection~~ shall approach the intersection in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of ~~such~~ *the* vehicle. ~~and after~~ *After* entering the intersection the left turn ~~shall~~ *must* be made so as to leave the intersection, as nearly as practicable, in the left-hand lane lawfully available to traffic moving in ~~such~~ *the* direction upon the roadway being entered.

(d) A person making a turn under ~~subsections~~ *subsection* (1)(a), (1)(b), or (1)(c) is entitled to the full use of the lane from which the turn may be legally made.

(2) (a) A person operating a bicycle who intends to turn left shall follow the course described in subsection (1) or in subsection (2)(b):

(b) A person operating a bicycle who intends to turn left shall approach the turn as close as practicable to the right curb or edge of the roadway. After proceeding across the intersecting roadway, the person shall make the turn as close as practicable to the curb or edge of the roadway on the far right side of the intersection. After turning, the person shall yield to through traffic and shall comply with any official traffic control device or police officer regulating traffic on the highway along which he intends to proceed.

(3) (2) Local authorities in their respective jurisdictions may ~~cause markers, buttons, or signs to be placed~~ *place official traffic control devices* within or adjacent to intersections, ~~directing and thereby require and direct~~ that a different course from that specified in this section be traveled by vehicles turning at an intersection, ~~and when markers, buttons, or signs are so placed no driver~~ *Where official traffic control devices that direct a different course are placed, the operator of a vehicle shall may not turn a the vehicle at an intersection* other than as directed ~~and required by such markers, buttons, or signs~~ *by the official traffic control devices.*

(3) Where a special lane has been indicated by official traffic control devices allowing operators of vehicles proceeding in opposite directions to make left turns:

- (a) a left turn may not be made from any other lane; and
- (b) a vehicle may not be operated in the lane except when making a left turn from or onto the roadway or when making a U-turn when that movement is permitted by law."

**Section 18.** Section 61-8-334, MCA, is amended to read:

**"61-8-334. Turning Limitation on U-turns — turning on curve or crest of grade prohibited.** ~~No~~ An operator of a vehicle shall be turned so as may not turn the vehicle to proceed in the opposite direction:

- (1) unless the movement can be made safely and without interfering with other traffic; or
- (2) upon any curve or upon the approach to or near the crest of a grade where ~~such~~ the vehicle cannot be seen by the ~~driver~~ operator of any other vehicle approaching from either direction within 500 feet."

**Section 19.** Section 61-8-336, MCA, is amended to read:

**"61-8-336. Turning movements and required signals.** (1) ~~No~~ A person shall may not turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway as required by 61-8-333 or turn a vehicle to enter a private road or driveway or otherwise turn a vehicle from a direct course or move right or left upon a roadway unless ~~and until such~~ the movement can be made with reasonable safety ~~and until an appropriate signal has been given.~~ ~~No~~ A person shall so may not turn any a vehicle without giving an appropriate signal in the manner hereinafter provided in ~~the event any other traffic may be affected by such movement~~ this section.

(2) A signal of intention to turn right or left, other than when passing, ~~when required shall~~ must be given continuously during not less than the last 100 feet traveled by the vehicle before turning in any business, residence, or urban district as defined in 61-1-408 through 61-1-410.

(3) A signal of intention to turn right or left, other than when passing, ~~when required shall~~ must be given continuously during not less than the last 300 feet traveled by the vehicle before turning in areas other than those set forth in subsection (2).

~~(4) A signal by hand and arm need not be given continuously by the person operating a bicycle if the hand is needed in the control or operation of the bicycle.~~

~~(5)~~(4) ~~No~~ A person shall may not stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided herein to the ~~driver~~ operator of any a vehicle immediately to the rear when there is opportunity to give ~~such~~ the signal."

**Section 20.** Section 61-8-338, MCA, is amended to read:

**"61-8-338. Method of giving hand-and-arm signals.** ~~(1) Except as provided in subsection (2), all~~ All signals herein required in this part that are given by hand and arm shall must be given from the left side of the vehicle by the operator of the vehicle in the following manner ~~and such signals shall indicate as follows:~~

- ~~(a)~~(1) Left For a left turn, ~~Hand~~ the operator's hand and arm must be extended horizontally.

~~(b)(2) Right For a right turn, Hand the operator's hand and arm forearm must be extended upward.~~

~~(e)(3) Stop For a stop or a decrease in speed, Hand the operator's hand and arm must be extended downward.~~

~~(2) The person operating a bicycle may signal a right turn by extending the right hand and arm horizontally."~~

**Section 21.** Section 61-8-340, MCA, is amended to read:

**"61-8-340. Vehicle turning left at intersection.** The ~~driver~~ operator of a vehicle within an intersection intending to turn to the left shall yield the right-of-way to any vehicle approaching from the opposite direction ~~which that~~ is within the intersection or ~~so close thereto as enough to the intersection to~~ constitute an immediate hazard, ~~but said driver, having so~~ Once the operator has yielded and ~~having given~~ provided the operator is giving a signal when and as required by this chapter, the operator may make ~~such~~ the left turn and the ~~drivers operators~~ of all other vehicles approaching the intersection from ~~said the~~ opposite direction shall yield the right-of-way to the vehicle making the left turn. The provisions of this section ~~shall not be applicable~~ do not apply where it is otherwise directed by ~~appropriate signs or signals~~ official traffic control devices."

**Section 22.** Section 61-8-341, MCA, is amended to read:

**"61-8-341. Vehicle entering through highway or stop intersection.** (1) The ~~driver~~ operator of a vehicle shall stop as required by 61-8-344 at the entrance to a through highway and shall yield the right-of-way to other vehicles ~~which have entered the intersection from said through highway or which that~~ are approaching ~~so closely on said~~ close enough on the through highway as to constitute an immediate hazard, ~~but said driver having so~~ Once the operator has yielded, the operator may proceed and the ~~drivers operators~~ of all other vehicles approaching the intersection on ~~said the~~ through highway shall yield the right-of-way to the vehicle ~~so~~ proceeding into or across the through highway.

~~(2) The driver of a vehicle shall likewise stop in obedience to a stop sign as required herein at an intersection where a stop sign is erected at one or more entrances thereto although not a part of a through highway and shall proceed cautiously, yielding to vehicles not so obliged to stop which are within the intersection or approaching so closely as to constitute an immediate hazard, but may then proceed."~~

**Section 23.** Section 61-8-342, MCA, is amended to read:

**"61-8-342. Vehicles approaching "Yield" sign.** ~~When the intersection is designated by the department of transportation, or the local authority having jurisdiction, as a "Yield" intersection, the driver~~ An operator of a vehicle approaching the a "Yield" sign is subject to the following provisions:

(1) The operator shall slow to a speed of ~~not more than 15 miles per hour and~~ yield right of way to all vehicles approaching from the right or left on the ~~intersecting roads or streets which are so close as to constitute an immediate hazard that is reasonable for existing conditions and, if required for safety, shall stop before entering the intersection.~~

(2) After slowing or stopping, the operator shall yield the right-of-way to any vehicle in the intersection or approaching on another roadway close enough to constitute an immediate hazard during the time that the operator is moving across or within the intersection or junction of roadways.



(3) *An operator of a vehicle shall yield the right-of-way to pedestrians within crosswalks at the intersection.*

(4) ~~If a driver~~ *an operator of a vehicle, after having driven past a "Yield" sign, is involved in a collision with another vehicle at an intersection or interferes with the movement of other vehicles after driving past a "Yield" sign, such junction of roadways or with a pedestrian in an adjacent crosswalk, the collision or interference shall be deemed is considered prima facie evidence of the driver's operator's failure to yield right-of-way.*

**Section 24. Right-of-way for bicycles.** (1) The operator of a motor vehicle may not:

(a) intentionally interfere with the movement of a person who is lawfully riding a bicycle; or

(b) overtake and pass a person riding a bicycle unless the operator of the motor vehicle can do so safely without endangering the person riding the bicycle.

(2) The operator of a motor vehicle shall yield the right-of-way to a person who is riding a bicycle within a designated bicycle lane.

**Section 25.** Section 61-8-343, MCA, is amended to read:

**"61-8-343. Vehicle entering highway roadway from private road, driveway, alley, or public approach ramp.** The ~~driver~~ operator of a vehicle about to enter or cross a highway roadway from a private road, driveway, alley, or public approach ramp shall yield the right-of-way to all vehicles approaching on said highway the roadway."

**Section 26.** Section 61-8-344, MCA, is amended to read:

**"61-8-344. Vehicles to stop at stop signs.** (1) The department of transportation ~~with reference to state highways and local authorities with reference to other highways under~~ in their jurisdiction *respective jurisdictions* may designate through highways and erect stop signs at specified entrances to these highways or may designate an intersection as a stop intersection and erect ~~similar~~ stop signs at one or more entrances to that intersection.

~~(2) The sign shall bear the word "Stop" in letters not less than 8 inches in height, and it shall be made luminous at nighttime by steady or flashing internal illumination or by a fixed floodlight projected on the face of the sign or by efficient reflecting elements on the face of the sign.~~

~~(3)~~ (2) The stop sign shall be erected as near as practicable to the nearest line of the crosswalk on the near side of the intersection or, if there is no crosswalk, then as close as practicable to the nearest line of the roadway and its placement must conform to the sign manual adopted by the department of transportation.

~~(4)~~ (3) ~~A driver~~ An operator of a vehicle approaching a stop sign shall stop before entering the crosswalk on the near side of the intersection or, in the event there is no crosswalk, ~~he~~ the operator shall stop at a clearly marked stop line, ~~but if none, then~~ If there is not a clearly marked stop line, the operator shall stop at the point nearest the intersecting roadway where the ~~driver~~ operator has a view of approaching traffic on the intersecting roadway before entering the intersection except when directed to proceed by a police officer, ~~or~~ highway patrol officer, or traffic control signal."

**Section 27.** Section 61-8-345, MCA, is amended to read:

**"61-8-345. Stop before emerging from alley, driveway, private road, or building.** The ~~driver~~ operator of a vehicle within a business or residence

district *who is* emerging from an alley, driveway, *private road*, or building shall stop ~~such the~~ vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across ~~any alleyway or an alley~~, driveway, or *private road* and shall yield the right-of-way to ~~any pedestrian as may be necessary to avoid collision, and upon pedestrians~~. Upon entering the roadway, *the operator* shall yield the right-of-way to all vehicles approaching on ~~said the~~ roadway.”

**Section 28.** Section 61-8-346, MCA, is amended to read:

**“61-8-346. Operation of vehicles on approach of police vehicles or authorized emergency vehicles or police vehicles — approaching stationary emergency vehicles or police vehicles.** (1) Upon the immediate approach of an authorized emergency vehicle making use of audible and visual signals meeting the requirements of 61-9-402 or of a police vehicle properly and lawfully making use of an audible signal only, the ~~driver~~ *operator* of every other vehicle shall yield the right-of-way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in that position until the ~~police vehicle or~~ authorized emergency vehicle *or police vehicle* has passed, except when otherwise directed by a police officer or highway patrol officer.

(2) This section does not relieve the driver of a ~~police vehicle or an~~ authorized emergency vehicle *or police vehicle* from the duty to drive with due regard for the safety of all persons using the highway.

(3) Upon approaching a stationary authorized emergency vehicle *or police vehicle* that is displaying visible signals of flashing or rotating amber, blue, red, or green lights, the ~~driver~~ *operator* of the approaching vehicle shall:

(a) reduce the vehicle’s speed, proceed with caution, and, if possible considering safety and traffic conditions, move to a lane that is not adjacent to the lane in which the authorized emergency vehicle *or police vehicle* is located or move as far away from the authorized emergency vehicle *or police vehicle* as possible; or

(b) if changing lanes is not possible or is determined to be unsafe, reduce the vehicle’s speed, proceed with caution, and maintain a reduced speed, appropriate to the road and the conditions, through the area where the authorized emergency vehicle *or police vehicle* is stopped.”

**Section 29.** Section 61-8-347, MCA, is amended to read:

**“61-8-347. Obedience to signal indicating approach of train.** (1) ~~Whenever any~~ When a person ~~driving operating~~ a vehicle approaches a railroad grade crossing under any of the circumstances stated in this section, the ~~driver~~ *operator* of ~~such the~~ vehicle shall stop ~~within 50 feet as close as practicable~~ but not less than 15 feet from the nearest rail of ~~such the~~ railroad, and ~~shall~~ *may* not proceed until ~~he the~~ *operator* can do so safely. The ~~foregoing~~ requirements ~~shall~~ *of this subsection (1)* apply when:

(a) a clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train;

(b) a crossing gate is lowered or when a ~~human flagman~~ *flag person* gives ~~or continues to give~~ a signal of the approach or passage of a railroad train;

(c) a railroad train approaching within approximately 1,500 feet of the highway crossing emits ~~a~~ *an* audible signal ~~audible from such distance and such~~ *indicating that the* railroad train, by reason of its speed or nearness to ~~such the~~ crossing, is an immediate hazard; or

(d) an approaching railroad train is plainly visible and is in hazardous proximity to ~~such~~ the crossing.

(2) ~~No~~ A person ~~shall drive~~ *may not operate* any vehicle through, around, or under any crossing gate or barrier at a railroad *grade* crossing while ~~such~~ the gate or barrier is closed or is being opened or closed.”

**Section 30.** Section 61-8-348, MCA, is amended to read:

**“61-8-348. All vehicles to stop at certain railroad grade crossings. (1)** The department of transportation and local authorities *in their respective jurisdictions* may designate particularly dangerous highway grade crossings of railroads and erect stop signs at these crossings. ~~When~~ *Where* these stop signs are erected, the ~~driver~~ *operator* of a vehicle shall stop ~~within 50 feet~~ *as close as practicable* but not less than 15 feet from the nearest rail of the railroad and ~~shall~~ *may* proceed only upon exercising due care.

(2) *The operator of a vehicle upon a highway outside of the limits of an incorporated city or town who is approaching a highway grade crossing where a flag person or a mechanical device is not in place or maintained to warn the public of approaching trains shall, before crossing the railroad tracks, stop the vehicle as close as practicable but not less than 15 feet from the nearest rail if:*

(a) *a curve in the tracks or vegetation or some other feature or characteristic obscures the view of approaching trains; or*

(b) *a moving train is within sight or hearing.”*

**Section 31.** Section 61-8-349, MCA, is amended to read:

**“61-8-349. Certain vehicles to stop at all railroad grade crossings. (1)** ~~A person driving a motor vehicle upon a public highway of this state outside of corporate limits of incorporated cities or towns where the view is obscure or when a moving train is within sight or hearing shall bring the vehicle to a full stop not less than 10 or more than 100 feet from the intersection of the highway and the railroad tracks, before crossing the railroad tracks, at all crossings where a flagman or a mechanical device is not maintained to warn the traveling public of approaching trains or cars.~~

~~(2)(a)~~ (1) (a) Except as provided in subsection ~~(2)(b)~~ (1)(b), the driver of a motor vehicle carrying seven or more passengers for hire, a school bus with or without passengers, or a vehicle carrying explosive substances or flammable liquids as a cargo or part of a cargo, before crossing at grade any track or tracks of a railroad, shall stop the vehicle ~~within 50 feet~~ *as close as practicable* but not less than 15 feet from the nearest rail of the railroad and while stopped shall open the door (in the case of a school bus) and shall listen and look in both directions along the track for an approaching train and for signals indicating the approach of a train and may not proceed until ~~he~~ *the driver* can do so safely. After stopping as required in this section and upon proceeding when it is safe to do so, the ~~driver~~ *operator* of a vehicle ~~shall~~ *may* cross only in a gear of the vehicle that requires no changing gears while traversing the crossing. The ~~driver~~ *operator* may not shift gears while crossing the track or tracks.

(b) A stop is not required at a crossing where a police officer, highway patrol officer, or *official* traffic control ~~signal~~ *device* directs traffic to proceed.

~~(3)~~(2) As used in this section, “*official* traffic control ~~signal~~ *device*” does not include a railroad grade crossing signal.”

**Section 32.** Section 61-8-350, MCA, is amended to read:

**“61-8-350. Moving heavy equipment at railroad grade crossings.** (1) ~~No~~ A person shall ~~operate or move~~ *comply with the provisions of this section before operating or moving upon or across the tracks at a railroad grade crossing* any crawler-type tractor, steam shovel, derrick, roller, or any equipment or structure ~~having that has:~~

- (a) a normal operating speed of 10 or less miles ~~per~~ an hour; or
- (b) a vertical body or load clearance *measured above the surface of the roadway of:*
  - (i) less than one-half inch ~~per~~ for each foot of the distance between any two adjacent axles; or
  - (ii) ~~in any event of less than at least 9 inches, measured above the level surface of a roadway, upon or across any tracks at a railroad grade crossing without first complying with this section.~~

(2) Notice of ~~any such an~~ intended crossing ~~shall must~~ be given to a ~~station agent representative of such the~~ railroad and reasonable time *must be given to such the* railroad to provide proper protection at ~~such the~~ crossing.

(3) Before making ~~any such a~~ crossing the person operating or moving ~~any such the~~ vehicle or equipment shall first stop the ~~same vehicle or equipment as close as practicable but not less than 15 feet or more than 50 feet~~ from the nearest rail of ~~such the~~ railroad and while ~~so~~ stopped shall listen and look in both directions along ~~such the~~ track for any approaching train and for signals indicating the approach of a train; ~~and shall~~ *The person may not proceed until the crossing can be made safely.*

(4) ~~No such~~ A crossing ~~shall may not~~ be made when warning is given by automatic signal, ~~or crossing gates, or a flagman flag person, or otherwise other~~ official traffic control device of the immediate approach of a railroad train or car. If a ~~flagman flag person~~ is provided by the railroad, movement over the crossing ~~shall must~~ be under ~~his the~~ flag person's direction.”

**Section 33.** Section 61-8-354, MCA, is amended to read:

**“61-8-354. Stopping, standing, or parking prohibited in specified places — exceptions.** (1) ~~No~~ A person ~~shall may not~~ stop, stand, or park a vehicle, except ~~[as allowed under subsection (2) [section 13 of LC 200] or]~~ when necessary to avoid conflict with other traffic or in compliance with law or the directions of a police officer, ~~or highway patrol officer, or official~~ traffic control device, in any of the following places:

- (a) on a sidewalk;
- (b) in front of a public or private driveway;
- (c) within an intersection;
- (d) within 15 feet of a fire hydrant;
- (e) on a crosswalk;
- (f) within 20 feet of a crosswalk at an intersection;
- (g) within 30 feet upon the approach to any flashing beacon, stop sign, or ~~official~~ traffic control ~~signal~~ device located at the side of a roadway;
- (h) between a safety zone and the adjacent curb or within 30 feet of points on the curb immediately opposite the ends of a safety zone, unless the local authorities indicate a different length by signs or markings;
- (i) within 50 feet of the nearest rail of a railroad crossing;

(j) within 20 feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within 75 feet of ~~said~~ the entrance when properly signposted;

(k) alongside or opposite any street excavation or obstruction when stopping, standing, or parking would obstruct traffic;

(l) on the roadway side of any vehicle stopped or parked at the edge or curb of a street;

(m) upon any bridge or other elevated structure upon a highway or within a highway tunnel;

(n) at any place where official ~~signs~~ *traffic control devices* prohibit stopping.

~~(2) A bicycle may be parked on a sidewalk and other such places if the parking does not impede normal and reasonable movement of pedestrians or other traffic.~~

~~(3)(2) A public bus stop may not be established in the areas described in subsections (1)(a) through (1)(c) and (1)(e). Otherwise, this section does not prohibit the establishment of public bus stops and the regulation of their use by a local government the authority having jurisdiction. Such a bus stop must may only be established by ordinance pursuant to a traffic and engineering study. Such establishment is subject to review and approval by the department of transportation if the bus stop is to be established on a street or highway under its jurisdiction.~~

~~(4)(3) No A person shall may not move a vehicle not lawfully under his the person's control into any such a prohibited area or an unlawful distance away from a curb such distance as is unlawful."~~

**Section 34.** Section 61-8-355, MCA, is amended to read:

**"61-8-355. Additional parking regulations.** (1) Except as otherwise provided in this section, a vehicle *that is* stopped or parked upon a two-way roadway ~~where there are adjacent curbs shall must~~ be stopped or parked with the right-hand wheels of the vehicle parallel to and within 18 inches of the right-hand curb *or as close as practicable to the right edge of the right-hand shoulder.*

~~(2) A local authority may by ordinance permit parking of a vehicle Except when otherwise provided by the authority having jurisdiction, a vehicle that is stopped or parked upon a one-way roadway must be stopped or parked parallel to the curb or edge of the roadway in the direction of authorized traffic movement, with its right-hand wheels within 18 inches of the right-hand curb or as close as practicable to the right edge of the right-hand shoulder or with the its left-hand wheels adjacent to and within 18 inches of the left-hand curb of a one-way roadway or as close as practicable to the left edge of the left-hand shoulder.~~

(3) A local authority may by ordinance permit angle parking on a roadway, except that angle parking ~~shall~~ may not be permitted on any federal-aid or state highway unless the department of transportation determines that the roadway is of sufficient width to permit angle parking without interfering with the free movement of traffic.

(4) The ~~department with respect to highways under its authority having~~ jurisdiction may place ~~signs~~ *official traffic control devices* prohibiting or restricting the stopping, standing, or parking of vehicles on a highway where in its ~~opinion~~ *judgment* this stopping, standing, or parking is dangerous to those using the highway or where the stopping, standing, or parking of vehicles would

unduly interfere with the free movement of traffic on it. ~~These signs shall be official signs, and a person may not stop, stand, or park a vehicle in violation of the restrictions stated on these signs.~~

**Section 35.** Section 61-8-356, MCA, is amended to read:

**“61-8-356. Prohibition against parking or leaving vehicles on public property — presumption of ownership.** (1) A vehicle may not be parked or left standing upon the right-of-way of a public highway for a period longer than 48 hours or upon a city street or state, county, or city property for a period longer than 5 days.

(2) The abandonment of a ~~motor~~ vehicle, *other than a bicycle*, on a public highway, a city street, public property, or private property creates a prima facie presumption that the last-registered owner of the ~~motor~~ vehicle is responsible for the abandonment and is liable for the costs incurred in removing, storing, and disposing of the abandoned vehicle, less the amount realized if the ~~motor~~ vehicle is sold.

(3) The filing of a ~~verified~~ theft report with a law enforcement agency prior to the abandonment relieves the last-registered owner of liability under subsection (2).”

**Section 36.** Section 61-8-359, MCA, is amended to read:

**“61-8-359. Riding on motorcycles.** (1) A person operating a motorcycle or quadricycle on public streets or highways ~~shall~~ may ride only upon the permanent and regular seat attached ~~thereto, and such to the motorcycle or quadricycle.~~ The operator ~~shall~~ may not carry any other person; ~~nor shall any other and another person may not~~ ride on a motorcycle or quadricycle unless ~~such~~ the motorcycle or quadricycle is designed to carry more than one person, in which event a passenger may ride upon the permanent and regular seat if designed for two persons or upon another seat firmly attached to the rear or side of the operator.

(2) ~~No~~ A passenger ~~shall~~ may not be carried in a position that will interfere with the operation of the motorcycle or quadricycle or the view of the operator.

(3) ~~No~~ A person operating a motorcycle or quadricycle ~~shall~~ may not carry any packages, bundles, or articles ~~which~~ that would *prevent the operator from keeping both hands on the handlebars or that would* interfere with the operation of ~~said~~ the vehicle in a safe and prudent manner.

(4) ~~“Sidesaddle” riding on a motorcycle or quadricycle is prohibited~~ A person may ride upon a motorcycle or quadricycle only while sitting astride the seat, facing forward, with one leg on each side of the motorcycle or quadricycle.

(5) ~~Motorcycles~~ Except as provided in subsections (5)(a) and (5)(b), motorcycles and quadricycles ~~are to~~ must be operated with lights on at all times when operated on any public highway or street, ~~except that if roadway.~~ A motorcycle or quadricycle may be operated without lights from one-half hour before sunrise to one-half hour after sunset if:

(a) the motorcycle is registered under 61-3-411 as a collector’s item, ~~it may be operated without lights from one-half hour before sunrise to one-half hour after sunset~~ and if persons and vehicles are clearly discernible at a distance of 500 feet; or

(b) the motorcycle or quadricycle is being driven to the nearest repair facility for headlamp repair.

(6) ~~Not~~ No more than two motorcycles ~~shall~~ may be operated side by side in a single traffic lane.

(7) All motor vehicles, including motorcycles and quadricycles, are entitled to the full use of a traffic lane, and ~~no~~ a vehicle ~~shall~~ may not be driven or operated in ~~such~~ a manner ~~so as to deprive that deprives~~ any other vehicle of the full use of a traffic lane, except that motorcycles may, with the consent of both drivers, be operated ~~not~~ no more than two abreast in a single traffic lane.

(8) Every person riding a motorcycle or quadricycle upon a roadway ~~shall be~~ is granted all of the rights and ~~shall be~~ is subject to all of the duties applicable to the driver of a motor vehicle except ~~as to~~ for those provisions which, by their nature, can have no application."

**Section 37.** Section 61-8-360, MCA, is amended to read:

**"61-8-360. Obstruction to driver's view or driving mechanism.** (1) ~~No~~ A person ~~shall drive~~ may not operate a vehicle, other than a bicycle, when it is so loaded, or when there are in the front seat ~~such number of persons exceeding three, as to obstruct~~ with more than three people in the front seat or with any load or number of people in the front seat that would obstruct the view of the ~~driver~~ operator to the front or sides of the vehicle or ~~as to~~ that would interfere with the ~~driver's~~ operator's control over the driving mechanism of the vehicle.

(2) ~~No~~ A passenger in a vehicle ~~shall~~ may not ride in ~~such~~ a position ~~as to~~ interfere that interferes with the ~~driver's~~ operator's view ahead or to the sides or ~~to interfere~~ that interferes with ~~his~~ the operator's control over the driving mechanism of the vehicle."

**Section 38.** Section 61-8-361, MCA, is amended to read:

**"61-8-361. Driving on mountain highways.** The driver of a motor vehicle traveling through defiles or canyons or on mountain highways shall hold ~~such~~ the motor vehicle under control and as near the right-hand edge of the ~~highway~~ roadway as reasonably possible."

**Section 39.** Section 61-8-362, MCA, is amended to read:

**"61-8-362. Coasting prohibited.** The driver of ~~any~~ a motor vehicle when traveling upon a downgrade ~~shall~~ may not coast with the ~~gears~~ transmission of ~~such~~ the vehicle in neutral or with the clutch manually disengaged."

**Section 40.** Section 61-8-363, MCA, is amended to read:

**"61-8-363. Following fire apparatus prohibited.** The ~~driver~~ operator of ~~any~~ a vehicle other than one on official business ~~shall~~ may not follow ~~any~~ a fire apparatus traveling in response to a fire ~~alarm~~ call closer than 500 feet or drive into or ~~park~~ ~~such~~ stop the vehicle within ~~the block~~ 500 feet of where the fire apparatus has stopped in answer to a fire ~~alarm~~ call."

**Section 41.** Section 61-8-364, MCA, is amended to read:

**"61-8-364. Crossing firehose.** ~~No~~ A vehicle ~~shall~~ may not be ~~driven~~ operated over ~~any~~ an unprotected hose of a fire department when ~~the hose is~~ laid down on any ~~street~~ roadway, private road, or private driveway, to be used at any fire or alarm of fire, without the consent of the fire department official in command."

**Section 42.** Section 61-8-365, MCA, is amended to read:

**"61-8-365. Putting refuse on highway prohibited.** (1) A person may not throw or deposit upon a highway glass bottles, glass, nails, tacks, wire, cans, plastic bottles, plastic, ~~or~~ paper, or any other debris. A person may not throw or

deposit upon a highway any substance likely to injure a person or animal or damage a vehicle upon the highway.

(2) A person who drops or permits to be dropped or thrown upon a highway destructive or injurious material shall immediately remove the material or cause it to be removed.

(3) A person who removes a wrecked or damaged vehicle from a highway shall remove glass or any other injurious substance dropped upon the highway from the vehicle.

(4) Except as provided in 61-8-372 and subsection (5) of this section, a person convicted of violating this section shall be fined not more than \$250. Except for the maximum fine of \$250 as provided in this subsection and except for the maximum fine of \$500 as provided in 61-8-372, the penalty provisions of 61-8-711 apply to this section.

(5) A person may not throw or deposit upon a highway plastic bottles or any other containers in which urine or feces have been deposited. A person convicted of violating this subsection shall be fined not more than ~~\$500~~ \$1,000. *The department shall make information about this subsection available at all weigh stations.*"

**Section 43.** Section 61-8-368, MCA, is amended to read:

**"61-8-368. Opening and closing vehicle doors.** ~~No~~ A person ~~shall~~ may ~~not~~ open ~~any~~ a door of a motor vehicle unless ~~and until~~ it is reasonably safe to do so without interfering with the movement of other traffic, ~~nor shall any~~ A person ~~may not~~ leave a door open on a side of a vehicle ~~available adjacent~~ to moving traffic for a period of time longer than ~~is~~ necessary to load or unload passengers."

**Section 44.** Section 61-8-369, MCA, is amended to read:

**"61-8-369. Shooting from or across road or highway right-of-way.** Except as provided in 87-2-803(4), ~~no~~ a person ~~shall~~ may ~~not~~ shoot ~~any~~ a firearm from or across the right-of-way of ~~any state or federal~~ a highway or county road."

**Section 45.** Section 61-8-715, MCA, is amended to read:

**"61-8-715. Reckless driving — reckless endangerment of highway workers — penalty.** (1) Except as provided in subsection ~~(3)~~ (2), a person convicted of reckless driving under 61-8-301(1)(a) or ~~(1)(c)~~ (1)(b) or convicted of reckless endangerment of a highway ~~workers~~ worker under ~~61-8-315~~ 61-8-301(4) shall be punished upon a first conviction by imprisonment for a term of not more than 90 days, by a fine of not less than \$25 or more than \$300, or both. On a second or subsequent conviction, the person shall be punished by imprisonment for a term of not less than 10 days or more than 6 months, by a fine of not less than \$50 or more than \$500, or both.

~~(2) Except as provided in subsection (3), a person convicted of reckless driving under 61-8-301(1)(b) shall be punished by imprisonment in the county or city jail for a term of not less than 10 days or more than 6 months to which may be added, at the discretion of the court, a fine of not less than \$300 or more than \$500. On a second or subsequent conviction, the person shall be punished by imprisonment for a term of not less than 30 days or more than 1 year to which may be added, at the discretion of the court, a fine of not less than \$500 or more than \$1,000.~~

~~(3)~~(2) A person who is convicted of reckless driving under 61-8-301 and whose offense results in the death or serious bodily injury of another person



shall be punished by a fine in an amount not exceeding \$10,000, by incarceration for a term not to exceed 1 year, or both. Section 61-8-351(6) does not apply to a prosecution under ~~61-8-301(1)(e)~~ 61-8-301(1)(b) that is punishable under this subsection.”

**Section 46.** Section 61-9-402, MCA, is amended to read:

**“61-9-402. Audible and visual signals on police, emergency vehicles, and on-scene command vehicles — immunity.** (1) A police vehicle must be equipped with a siren capable of giving an audible signal and may be equipped with alternately flashing or rotating red or blue lights as specified in this section. ~~The use of signal equipment as described in this section imposes upon the drivers of other vehicles the obligation to yield right of way or to stop and to proceed past the signal or light only with caution and at a speed that is no greater than is reasonable and proper under the conditions existing at the point of operation.~~

(2) An authorized emergency vehicle must be equipped:

(a) with a siren and an alternately flashing or rotating red light as specified in this section; and

(b) with signal lamps mounted as high and as widely spaced laterally as practicable that are capable of displaying to the front two alternately flashing red lights located at the same level and to the rear two alternately flashing red lights located at the same level. These lights must have sufficient intensity to be visible at 500 feet in normal sunlight.

(3) A bus used for the transportation of school children must be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, displaying to the front two red and two amber alternating flashing lights and to the rear two red and two amber alternating flashing lights. These lights must have sufficient intensity to be visible at 500 feet in normal sunlight. The warning lights must be as prescribed by the board of public education and approved by the department.

(4) A police vehicle and an authorized emergency vehicle may, and an emergency service vehicle must, be equipped with alternately flashing or rotating amber lights as specified in this section.

~~(a)~~(5) The use of signal equipment as described in this section imposes upon the ~~drivers~~ operators of other vehicles the obligation to yield right-of-way or to stop and to proceed past the signal or light only with caution and at a speed that is no greater than is reasonable and proper under the conditions existing at the point of operation subject to the provisions of 61-8-209 and 61-8-303.

~~(b)~~(6) An employee, agent, or representative of the state or a political subdivision of the state or of a fire department who is operating a police vehicle, an authorized emergency vehicle, or an emergency service vehicle and using signal equipment in rendering assistance at a highway crash scene or in response to any other hazard on the roadway that presents an immediate hazard or an emergency or life-threatening situation is not liable, except for willful misconduct, bad faith, or gross negligence, for injuries, costs, damages, expenses, or other liabilities resulting from a motorist operating a vehicle in violation of subsection ~~(4)(a)~~ (5).

~~(5)~~(7) Blue, red, and amber lights required in this section must be mounted as high as and as widely spaced laterally as practicable and capable of displaying to the front two alternately flashing lights of the specified color located at the same level and to the rear two alternately flashing lights of the

specified color located at the same level or one rotating light of the specified color, mounted as high as is practicable and visible from both the front and the rear. These lights must have sufficient intensity to be visible at 500 feet in normal sunlight. Except as provided in 61-9-204(6), only police vehicles as defined in 61-1-118 may display blue lights, lenses, or globes.

~~(6)~~(8) A police car and authorized emergency vehicle may be equipped with a flashing signal lamp that is green in color, visible from 360 degrees, and attached to the exterior roof of the vehicle for purposes of designation as the on-scene command and control vehicle in an emergency or disaster. The green light must have sufficient intensity to be visible at 500 feet in normal sunlight. Only the on-scene command and control vehicle may display green lights, lenses, or globes.

~~(7)~~(9) Only a police vehicle or an authorized emergency vehicle may be equipped with the means to flash or alternate its headlamps or its backup lights.

~~(8)~~(10) A violation of ~~61-9-402(4)(a)~~ subsection (5) is considered reckless endangerment of a highway ~~workers~~ worker, as provided in ~~61-8-315 61-8-301(4)~~, and is punishable as provided in ~~61-8-715(2)~~ 61-8-715.”

**Section 47.** Section 61-9-416, MCA, is amended to read:

**“61-9-416. Commercial tow truck definition — requirements.** (1) “Commercial tow truck” means a motor vehicle operating for compensation that is equipped with specialized equipment designed and intended for towing or the recovery of wrecked, disabled, or abandoned vehicles or other objects creating a hazard on the public roadways. A commercial tow truck must be equipped with:

(a) not less than two red flares, two red lanterns, or two warning lights or reflectors. The reflectors must be of a type approved by the department.

(b) at least two highway warning signs as provided in 61-9-431.

(c) a dry chemical fire extinguisher of at least 5 pound capacity or an equivalent alternative type of fire extinguisher, approved by the department;

(d) a lamp emitting a flashing red or amber light meeting the requirements of 61-9-402~~(5)~~(7), or both a red and amber light, mounted on top of the cab of the tow truck or on the top of the crane or hoist if the light can be seen from the front of the tow truck. The light from the lamp must be visible for a distance of 1,000 feet under normal atmospheric conditions and must be mounted so that it can be securely fastened with the lens of the lamp facing the rear of the tow truck upon which it is mounted. When standing at the location from which the disabled vehicle is to be towed, the operator of the tow truck may unfasten the red light and place it in a position considered advisable to warn approaching drivers. When the disabled vehicle is ready for towing, the red light must be turned to the rear of the tow truck upon which it is mounted and securely locked in this position. Additional red or amber lights of an approved type may be displayed at either side or both sides of the tow truck during the period of preparation at the location from which the disabled vehicle is to be towed.

(e) one or more brooms, and the operator of the tow truck engaged to remove a disabled vehicle from the scene of an accident shall remove all glass and debris deposited upon the roadway by the disabled vehicle that is to be towed;

(f) a shovel, and whenever practical, the tow truck operator engaged to remove a disabled vehicle shall spread dirt upon that portion of the roadway where oil or grease has been deposited by the disabled vehicle; and

(g) a portable electrical extension cord or other device for use in displaying stop, turn, and taillamps on the rear of the disabled vehicle. The length of the extension cord may not be less than the length of the combined vehicles. When a disabled vehicle is towed, the tow truck operator shall provide for the rear light that is capable of displaying a stop signal, turn signal, and taillamps by means of the extension cord or other device referred to in this subsection.

(2) The operator of a commercial tow truck used for the purpose of rendering assistance to other vehicles shall, when the rendering of assistance necessitates the obstruction of a portion of the roadway, place a highway warning sign as required in 61-9-431.

(3) The owner or operator of a commercial tow truck who complies with the requirements of 61-8-906 and 61-8-907 and this section may stop or park the tow truck upon a highway for the purpose of rendering assistance to a disabled vehicle, notwithstanding other provisions of this code.

(4) A commercial tow truck company that is in compliance with 61-9-431 and that is operating an emergency service vehicle and using signal equipment in rendering assistance at a highway crash scene or in response to any other hazard on the roadway that presents an immediate hazard or an emergency or life-threatening situation is not liable, except for willful misconduct, bad faith, or gross negligence, for injuries, costs, damages, expenses, or other liabilities resulting from a motorist operating a vehicle in violation of 61-9-402(4)(5)."

**Section 48.** Section 61-9-431, MCA, is amended to read:

**"61-9-431. Use of warning signs, flares, reflectors, lanterns, and flag persons.** (1) The operator of a commercial tow truck, in compliance with the requirements of 61-8-906 and 61-8-907, shall, when rendering assistance at a hazard on the highway that necessitates the obstruction of a portion or all of the roadway, place at least two warning signs as required in this section as soon as is practicable under the circumstances. Flag persons and cones may be used to augment the warning signs.

(2) Highway warning signs must be of a uniform type, with dimensions of 3 x 3 feet, lettering 5 inches high, and reflectorized orange background and black border, as prescribed by the department. The signs must be designed to be visible both *during the day* and *at night*. The warning signs must bear the words "hazard ahead", "lane closed ahead", "road closed ahead", "wreck ahead", "tow truck ahead", or "wrecker ahead", as prescribed by the department.

(3) The operator of a commercial tow truck used for the purpose of rendering assistance at a hazard on the highway that necessitates the obstruction of a portion of the roadway shall place a highway warning sign as required in subsection (2):

(a) in an area in which the posted speed limit is 45 miles an hour or less, not less than 600 feet in advance of the hazard and an equal distance to the rear of the hazard; and

(b) in an area in which the posted speed limit is more than 45 miles an hour or no speed limit is posted, 1,000 feet in advance of the hazard, except on a divided highway where the hazard does not cause disruption of traffic traveling on the opposite side of the divided highway, and an equal distance to the rear of the hazard.

(4) A local government unit may adopt an ordinance exempting an operator of a commercial tow truck from the requirements of subsection (2) within the limits of an incorporated city or town.

(5) When a hazard exists on the highway during the hours of darkness, the operator of a commercial tow truck called to render assistance shall place warning signs upon the highway as prescribed in this section and shall also place at least one red flare, red lantern, or warning light or reflector in close proximity to each warning sign.

(6) A violation of warning signs placed as provided in subsection (3) is considered reckless endangerment of a highway ~~workers~~ worker, as provided in ~~61-8-315~~ 61-8-301(4), and is punishable as provided in ~~61-8-715(2)~~ 61-8-715.”

**Section 49. School crossing guards.** (1) The trustees of a school district or the administration of a private school may organize and supervise school crossing guards for a school under their authority.

(2) The department of justice shall, in cooperation with the superintendent of public instruction and in accordance with the sign manual adopted by the department of transportation, prescribe by rule the identification, training requirements, and operation of school crossing guards.

(3) The purpose of school crossing guards is to influence and encourage pupils of the school to refrain from crossing public highways at points other than regular crossings, to direct pupils as to where and when to cross highways, and to direct traffic when pupils are crossing highways at regular crossings.

**Section 50. Repealer.** Section 61-8-315, MCA, is repealed.

**Section 51. Coordination instruction.** (1) If House Bill No. 189 is not passed and approved, then the bracketed language in 61-8-354(1) is void.

(2) If [this act] is passed and approved and House Bill No. 189 is not passed and approved, then:

(a) 61-8-333 must read as follows:

**“Section 20.** Section 61-8-333, MCA, is amended to read:

**“61-8-333. Required position and method of turning at intersections — bicycle turn procedures — signs.** (1) The ~~driver~~ operator of a vehicle intending to turn at an intersection shall do so as follows:

(a) ~~Right turns.~~ Both the approach for a right turn and a right turn ~~shall~~ must be made as close as practicable to the right-hand curb or edge of the roadway.

(b) ~~Left turn on two-way roadways.~~ At ~~any~~ an intersection where traffic is permitted to move in both directions on each roadway entering the intersection, an approach for a left turn ~~shall~~ must be made in that portion of the right half of the roadway nearest the center line ~~thereof of the roadway~~ and by passing to the right of ~~such~~ the center line where it enters the intersection. ~~and after~~ After entering the intersection, the left turn ~~shall~~ must be made so as to leave the intersection to the right of the center line of the roadway being entered. Whenever practicable the left turn ~~shall~~ must be made in that portion of the intersection to the left of the center of the intersection.

(c) ~~Left turns on other than two-way roadways.~~ At ~~any~~ an intersection where traffic is restricted to one direction on one or more of the roadways, the ~~driver~~ operator of a vehicle intending to turn left ~~at any such intersection~~ shall approach the intersection in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of ~~such~~ the vehicle. ~~and after~~ After entering the intersection the left turn ~~shall~~ must be made so as to leave the

intersection, as nearly as practicable, in the left-hand lane lawfully available to traffic moving in ~~such~~ the direction upon the roadway being entered.

(d) A person making a turn under ~~subsections~~ subsection (1)(a), (1)(b), or (1)(c) is entitled to the full use of the lane from which the turn may be legally made.

(2) (a) A person operating a bicycle who intends to turn left shall follow the course described in subsection (1) or in subsection (2)(b).

(b) A person operating a bicycle who intends to turn left shall approach the turn as close as practicable to the right curb or edge of the roadway. After proceeding across the intersecting roadway, the person shall make the turn as close as practicable to the curb or edge of the roadway on the far right side of the intersection. After turning, the person shall yield to through traffic and shall comply with any official traffic control device or police officer regulating traffic on the highway along which ~~he~~ the person intends to proceed.

(3) Local authorities in their respective jurisdictions may ~~cause markers, buttons, or signs to be placed~~ place official traffic control devices within or adjacent to intersections, ~~directing and thereby require and direct~~ that a different course from that specified in this section be traveled by vehicles turning at an intersection, ~~and when markers, buttons, or signs are so placed no driver~~ Where official traffic control devices that direct a different course are placed, the operator of a vehicle ~~shall~~ may not turn ~~a~~ the vehicle ~~at an intersection~~ other than as directed ~~and required by such markers, buttons, or signs~~ by the official traffic control devices.

(4) Where a special lane has been indicated by official traffic control devices allowing operators of vehicles proceeding in opposite directions to make left turns:

(a) a left turn may not be made from any other lane; and

(b) a vehicle may not be operated in the lane except when making a left turn from or onto the roadway or when making a U-turn when that movement is permitted by law.”; and

(b) 61-8-338 must read as follows:

“**Section 23.** Section 61-8-338, MCA, is amended to read:

“**61-8-338. Method of giving hand-and-arm signals.** (1) Except as provided in subsection (2), all signals ~~herein~~ required *in this part that* are given by hand and arm ~~shall~~ must be given from the left side of the vehicle *by the operator of the vehicle* in the following manner ~~and such signals shall indicate as follows:~~

(a) ~~Left~~ For a left turn, ~~Hand~~ the operator’s hand and arm must be extended horizontally.

(b) ~~Right~~ For a right turn, ~~Hand~~ the operator’s hand and ~~arm~~ forearm must be extended upward.

(c) ~~Stop~~ For a stop or a decrease in speed, ~~Hand~~ the operator’s hand and arm must be extended downward.

(2) The person operating a bicycle may signal a right turn by extending the right hand and arm horizontally.”

**Section 52. Codification instruction.** (1) [Sections 5 and 24] are intended to be codified as an integral part of Title 61, chapter 8, part 3, and the provisions of Title 61, chapter 8, part 3, apply to [sections 5 and 24].

(2) [Section 49] is intended to be codified as an integral part of Title 20, chapter 1, part 2, and the provisions of Title 20, chapter 1, part 2, apply to [section 49].

Approved April 16, 2003

## CHAPTER NO. 353

[HB 134]

AN ACT REVISING THE DISPOSITION OF FUNDS HELD BY OR FOR THE BENEFIT OF STATE PRISON INMATES; PROVIDING AN APPROPRIATION; AND AMENDING SECTIONS 17-7-502 AND 53-1-107, MCA.

*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: 2-15-151; 2-17-105; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-324; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; [section 3]; 53-6-703; 53-24-206; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; 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 Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch.

497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, the inclusion of 15-35-108 and 90-6-710 terminates June 30, 2005; pursuant to sec. 17, Ch. 414, L. 2001, the inclusion of 2-15-151 terminates December 31, 2006; and pursuant to sec. 2, Ch. 594, L. 2001, the inclusion of 17-3-241 becomes effective July 1, 2003.)”

**Section 2.** Section 53-1-107, MCA, is amended to read:

**“53-1-107. Limits on inmate Inmate financial transactions and trust account system.** (1) An inmate of the Montana a state prison in Deer Lodge or the women’s prison in Billings, as defined in 53-30-101(3)(c)(i) through (3)(c)(iii) and (3)(c)(v), shall use the prison inmate trust account system administered by the department of corrections to send money out of or receive money in the facility unless the department grants the inmate an exception. ~~If an inmate accumulates a balance in excess of \$200 in the inmate’s prison inmate trust account, the excess must, consistent with department rules, be forfeited for the payment of restitution or costs of incarceration.~~ The department may charge an inmate a minimum fee, not to exceed ~~\$1.60~~ \$2 each month, to administer the inmate’s account.

(2) *The department may, consistent with administrative rules adopted by the department, use a portion of the funds in an inmate’s account to:*

- (a) *satisfy court-ordered restitution, whether or not restitution is a condition of probation or parole;*
- (b) *satisfy court-ordered child support;*
- (c) *satisfy court-ordered fines, fees, or costs;*
- (d) *pay for the inmate’s medical and dental expenses and costs of incarceration; and*
- (e) *pay any other fees, costs, expenses, or monetary sanctions ordered by a court or imposed by a state prison and pay reasonable claims by a debt collection or financial institution.*

~~(2)(3)~~ (a) *Money forfeited taken under subsection (1) to (2) for the payment of restitution must be paid in the following order:*

- (i) *to the victim until the victim’s unreimbursed pecuniary loss is satisfied;*
- (ii) *to the crime victims compensation and assistance program in the department of justice for deposit in the state general fund until the state is fully reimbursed for compensation to the victim provided pursuant to Title 53, chapter 9, part 1;*
- (iii) *to any other government agency that has compensated the victim for the victim’s pecuniary loss; and*
- (iv) *to any insurance company that has compensated the victim for the victim’s pecuniary loss.*

(b) ~~If the inmate’s sentence did not provide for the payment of restitution or if there is a balance of money in the inmate’s account after restitution has been paid~~ *payments under subsection (2)(a), money forfeited under subsection (1) must be applied to the inmate’s costs of incarceration, the department may allow the balance to accumulate in a savings subaccount for the inmate.*

~~(3)(4)~~ (4) *The department shall adopt rules establishing criteria for forfeiture the prison inmate trust account system and criteria for the use of funds under subsection (1) this section. The rules must contain clear guidelines regarding*

~~forfeiture the use of funds that ensure restitution payment under subsection (2) but that:~~

~~(a) do not unreasonably inhibit an inmate's ability to save money for the purchase of tools or other items to further the education of the inmate for purposes of rehabilitation or seeking employment after release from the correctional facility; and~~

~~(b) do and that inhibit any an inmate's ability to deal in contraband or illegal acts within or outside the correctional facility state prison."~~

**Section 3. Prison inmate welfare account.** (1) There is an account in the state special revenue fund. The net proceeds from state prison inmate canteen purchases and inmate telephone use, cash proceeds from the disposition of confiscated contraband, and any public money held for the needs of inmates and their families and not otherwise allocated must be deposited in the account. Money in an account established under 53-1-107 may not be deposited in the account established in this subsection.

(2) The money in the account is statutorily appropriated, as provided in 17-7-502, to the department of corrections, which may allocate the money referred to in subsection (1) to the state prisons in proportion to the amount that each state prison contributed to the fund. The administrator of each state prison shall consult with the inmates about the use of the money allocated to the state prison and may use the money for the needs of the inmates and their families.

(3) For purposes of this section, "state prison" has the meaning provided in 53-30-101(3)(c)(i) through (3)(c)(iii) and (3)(c)(v).

**Section 4. Codification instruction.** [Section 3] is intended to be codified as an integral part of Title 53, chapter 1, part 1, and the provisions of Title 53, chapter 1, part 1, apply to [section 3].

**Section 5. Coordination instruction.** If House Bill No. 453 and [section 2 of this act], amending 53-1-107, are both passed and approved, then the amendments to subsections (1) and (2) of 53-1-107 contained in House Bill No. 453 are void.

Approved April 16, 2003

## CHAPTER NO. 354

[HB 210]

AN ACT AUTHORIZING AN APPEAL TO DISTRICT COURT BASED UPON THE DENIAL OF A MOTION TO WITHDRAW A PLEA OF GUILTY OR NOLO CONTENDERE BY A COURT OF LIMITED JURISDICTION; PROVIDING A TIME FOR AN APPEAL; AMENDING SECTIONS 46-17-203 AND 46-17-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

WHEREAS, the concurring opinion in *State v. Boucher*, 2002 MT 114, 309 Mont. 114, 48 P.3d 21 (2002), urges the Legislature to give the District Courts authority to entertain direct appeals from courts of limited jurisdiction in cases in which the defendant claims that a guilty plea was not voluntary.

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

**Section 1.** Section 46-17-203, MCA, is amended to read:



**“46-17-203. Plea of guilty — use of two-way electronic audio-video communication.** (1) Before or during trial, a plea of guilty or nolo contendere may be accepted when:

(a) subject to the provisions of subsection (3), the defendant enters a plea of guilty or nolo contendere in open court; and

(b) the court has informed the defendant of the consequences of the plea and of the maximum penalty provided by law that may be imposed upon acceptance of the plea.

(2) (a) *A Subject to subsection (2)(b), a plea of guilty or nolo contendere in a justice’s court, city court, or other court of limited jurisdiction waives the right of trial de novo in district court. A defendant must be informed of the waiver before the plea is accepted, and the justice or judge shall question the defendant to ensure that the plea and waiver are entered voluntarily.*

(b) *A defendant who claims that a plea of guilty or nolo contendere was not entered voluntarily may move to withdraw the plea. If the motion to withdraw is denied, the defendant may, within 90 days of the denial of the motion, appeal the denial of a motion to withdraw the plea to district court. The district court may appoint counsel, hold a hearing, and enter appropriate findings of fact, conclusions of law, and a decision affirming or reversing the denial of the defendant’s motion to withdraw the plea by the court of limited jurisdiction. The district court may remand the case, or the defendant may appeal the decision of the district court.*

(3) For purposes of this section, in cases in which the defendant is charged with a misdemeanor offense, an entry of a plea of guilty or nolo contendere through the use of two-way electronic audio-video communication, allowing all of the participants to be observed and heard in the courtroom by all present, is considered to be an entry of a plea of guilty or nolo contendere in open court. Audio-video communication may be used if neither party objects and the court agrees to its use. The audio-video communication must operate as provided in 46-12-201.”

**Section 2.** Section 46-17-311, MCA, is amended to read:

**“46-17-311. Appeal from justices’, municipal, and city courts.** (1) Except as provided in 46-17-203(2)(b) or subsection (4) of this section and except for cases in which legal issues are preserved for appeal pursuant to 46-12-204, all cases on appeal from a justice’s or city court must be tried anew in the district court and may be tried before a jury of six selected in the same manner as for other criminal cases. An appeal from a municipal court to the district court is governed by 3-6-110.

(2) The defendant may appeal to the district court by filing written notice of intention to appeal within 10 days after a judgment is rendered following trial or the denial of the motion to withdraw a plea as provided in 46-17-203(2)(b). In the case of an appeal by the prosecution, the notice must be filed within 10 days of the date that the order complained of is given. The prosecution may appeal only in the cases provided for in 46-20-103.

(3) Within 30 days of filing the notice of appeal, the court shall transfer the entire record of the court of limited jurisdiction to the district court.

(4) A defendant may appeal a justice’s court or city court revocation of a suspended sentence to the district court. The district court judge shall determine whether the suspended sentence will be revoked. A jury trial is not available in a sentence revocation procedure.”

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

**Section 4. Applicability.** [This act] applies to denial of motions to withdraw pleas of guilty or nolo contendere entered on or after [the effective date of this act].

Approved April 16, 2003

## CHAPTER NO. 355

[HB 223]

AN ACT CREATING THE STATE LAND BANK FUND; REVISING THE LAWS RELATING TO THE SALE OF STATE TRUST LAND AND THE DISPOSITION OF PROCEEDS; PROHIBITING THE SALE OF LAND TO THE FEDERAL GOVERNMENT; AUTHORIZING THE BOARD OF LAND COMMISSIONERS TO ACQUIRE LANDS FOR THE FINANCIAL BENEFIT OF TRUST BENEFICIARIES; PROVIDING A STATUTORY APPROPRIATION FOR THE FUNDING OF STATE LAND BANK FUNCTIONS, INCLUDING THE ACQUISITION OF TRUST LANDS; PROHIBITING CREATION OF RIGHT OF ACCESS; PROVIDING A DEADLINE FOR LAND SALES UNDER THE LAND BANKING PROCESS; REQUIRING A REPORT TO THE ENVIRONMENTAL QUALITY COUNCIL; AMENDING SECTIONS 17-3-1003, 17-7-502, 18-2-107, 77-1-109, 77-2-301, 77-2-306, 77-2-309, 77-2-323, 77-2-328, AND 77-2-337, MCA; REPEALING SECTIONS 77-2-307 AND 77-2-312, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 17-3-1003, MCA, is amended to read:

**“17-3-1003. Support of state institutions.** (1) For the support and endowment of each state institution, there is annually and perpetually appropriated, after any deductions made under 77-1-109, ~~and~~ Title 77, chapter 1, part 6, ~~and [section 12]~~, the income from all permanent endowments for the institution and from all land grants as provided by law. All money received or collected in connection with permanent endowments by all higher educational institutions, reformatory, custodial and penal institutions, state hospitals, and sanitariums, for any purpose ~~whatever~~, except revenue pledged to secure the payment of principal and interest of obligations incurred for the purchase, construction, equipment, or improvement of facilities at units of the Montana university system and for the refunding of obligations or money that constitutes temporary deposits, all or part of which may be subject to withdrawal or repayment, must be paid ~~over~~ to the state treasurer who shall deposit the money to the credit of the proper fund.

(2) Except as provided in subsections (1) and (3), all money received from the investment of grants of a state institution and all money received from the leasing of lands granted to a state institution must be deposited with the state treasurer of Montana for each institution, to the credit of the state special revenue fund.

(3) Except as provided in 77-1-109, all money received from the sale of timber from lands granted to a state institution must be deposited to the credit of the permanent trust fund for the support of the institution.”

**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: 2-15-151; 2-17-105; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-324; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-6-703; 53-24-206; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; [section 12]; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; 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 Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, the inclusion of 15-35-108 and 90-6-710 terminates June 30, 2005; pursuant to sec. 17, Ch. 414, L. 2001, the inclusion of 2-15-151 terminates December 31, 2006; and pursuant to sec. 2, Ch. 594, L. 2001, the inclusion of 17-3-241 becomes effective July 1, 2003.)”

**Section 3.** Section 18-2-107, MCA, is amended to read:

**“18-2-107. Deposit of capitol building grant revenue.** (1) The state treasurer shall deposit in a capital projects fund all revenue from the capitol building land grant after any deductions made under 77-1-109, ~~and~~ Title 77, chapter 1, part 6, ~~and~~ [section 12].

(2) The funds must be held and dedicated for the purpose of constructing capitol buildings or additions to buildings in accordance with the provisions of section 12 of The Enabling Act.”

**Section 4.** Section 77-1-109, MCA, is amended to read:

**“77-1-109. Deposits of proceeds in trust land administration account.** (1) The department shall, until the deposit equals the amount

appropriated for the fiscal year pursuant to 77-1-108, deposit into the trust land administration account created by 77-1-108, the following:

- (a) mineral royalties;
- (b) the proceeds or income from the sale of easements and timber, except timber from public school and Montana university system lands; ~~and~~
- (c) 5% of the interest and income annually credited to the public school fund in accordance with 20-9-341; *and*
- (d) *fees collected pursuant to 77-2-328.*

(2) After the deposits in subsection (1) have been made, the remainder of the proceeds, other than proceeds from timber from Montana university system lands, must be deposited in the appropriate permanent fund and the capitol building land grant trust fund. Timber proceeds from university system lands must be paid over to the state treasurer, who shall deposit the money to the credit of the proper fund for use as provided in 17-3-1003(1).

(3) The amount of money that is deposited into the trust land administration account may not exceed 1 1/8% of the book value balance in each of the nine permanent funds administered by the department on the first day of January preceding the new biennium and 10% of the previous fiscal year revenue deposited into the capitol building land grant trust fund.”

**Section 5.** Section 77-2-301, MCA, is amended to read:

**“77-2-301. Sales of state land under board control.** The board is hereby ~~vested with the power and authority to~~ *may* decide when sales of state lands ~~land~~ are to be held and what state lands are to be offered for sale, subject to the limitations of this title, as the best interests of the state may appear to require. ~~As a general rule and except as provided in 77-2-318, no sale of state lands shall be held unless applications have been made for the purchase of lands within one county by prospective purchasers representing at least 12 families.”~~

**Section 6.** Section 77-2-306, MCA, is amended to read:

**“77-2-306. Who may purchase.** ~~(1) State lands shall be sold only to citizens of the United States, persons who have declared their intentions to become citizens, corporations organized under the laws of this state, or towns, cities, counties, or consolidated local governments of this state. No person shall be qualified to purchase state land who has not reached the age of 18 years. As far as possible to determine, the lands shall be sold only to actual settlers or to persons who will improve the same and not to persons who are likely to hold such lands for speculative purposes intending to resell the same at a higher price without having added anything to their value.~~

~~(2) State lands may be sold to any sovereign state of the United States or to any board of trustees or public corporation or agency of such state created by such state as an agency or political subdivision thereof. Said lands may be purchased in the quantities set forth in 77-2-307 for use by such state, board of trustees, public corporation, agency, or political subdivision for educational or scientific purposes.~~

~~(3) State lands located wholly within the exterior boundaries of the tribal government's reservation as recognized by the federal government may be sold to a tribal government as defined in 18-11-102. (1) State land may be sold to any person who is 18 years of age or older or any governmental or private entity including tribal governments as defined in 18-11-102.~~

(2) ~~No~~ A sale involving land in excess of the acreage limitations in 77-2-307 160 acres may not be made under this section without first consulting with the board of county commissioners of the county or counties in which the lands to be sold are located.

(3) *State land may not be sold to the federal government or to an agency of the federal government, except for the purpose of building federal facilities and structures. Nothing in this section prohibits the sale of state land to a tribal government as defined in 18-11-102.*

**Section 7.** Section 77-2-309, MCA, is amended to read:

**“77-2-309. Discretion of board with respect to surveying and platting.** ~~Except as provided in 77-2-312, it shall be entirely optional with the board to determine whether or not state lands or any part thereof shall be surveyed, platted, and laid off into blocks and lots as herein provided, as may appear to be for the best interests of the state.~~ The board has the option of determining whether or not state lands or any part thereof shall be surveyed, platted, and laid off into blocks and lots as herein provided, as may appear to be for the best interests of the state.”

**Section 8.** Section 77-2-323, MCA, is amended to read:

**“77-2-323. Sale procedure and limitation.** (1) At the time fixed for the sale, ~~the lands~~ *state land* must be offered for sale at auction in the order that ~~they appear~~ *the land appears* in the notice of sale. Under the direction of the department, the ~~lands~~ *state land* must be sold to the highest qualified bidder under the following restrictions:

(a) ~~Lands.~~ *State land* may not be sold for less than the value determined by the board after appraisal by a qualified land appraiser.

(b) ~~Tillable lands capable of producing agricultural crops may not be sold for less than \$10 an acre.~~

(c) ~~Lands principally valuable for grazing purposes may not be sold for less than \$5 an acre.~~

(2) The ~~lands~~ *state land* must be sold as nearly as practicable according to the subdivisions in which ~~they are~~ *it is* advertised, and care must be taken not to subdivide any tract in such a way as to separate remaining portions from a water supply or from section lines or public highways.

(3) The sale may be adjourned from day to day until all the ~~lands~~ *state land* advertised ~~have~~ *has* been offered for sale.

(4) ~~If any successful bidder at a sale refuses or neglects to make the initial payment required to be made on the land purchased, the successful bidder shall forfeit to the state not less than \$50 or more than \$1,000, to be determined by the board according to the circumstances of the case. If the forfeiture is not paid when notice of the amount of the forfeiture has been served by the department, the attorney general shall sue for the recovery of the amount in the name of the state. The forfeiture amount must be deposited in the state general fund.”~~

**Section 9.** Section 77-2-328, MCA, is amended to read:

**“77-2-328. Additional rules — deposit of fees.** The board may prescribe any additional rules for the conduct of ~~these~~ *sales of state land* as in its judgment the interests of the state may demand. Any fees collected by a rule adopted pursuant to this section must be deposited in the ~~state general fund trust land administration account as provided in 77-1-108.”~~

**Section 10.** Section 77-2-337, MCA, is amended to read:

**“77-2-337. Disposition of sale proceeds.** (1) ~~The~~ *Except as provided in [section 12] and subsection (3) of this section,* the proceeds from the ~~lands~~ *state*

land sold, including all subsequent payments on the principal, ~~shall~~ must be credited to the permanent fund arising from the grant to which it belongs and ~~shall~~ must become and forever remain an inseparable and inviolable part thereof of the permanent fund.

(2) All payments on interest ~~shall~~ must be credited to the proper income fund and ~~shall~~ must be available for use as provided by law.

(3) (a) Proceeds from the sale of any state trust land, as authorized by [sections 11 through 17], must be deposited into the state land bank fund established in [section 12] to be used for the purposes described in [sections 12 and 14] for the long-term financial benefit of the beneficiaries for whom the funds were deposited.

(b) If the proceeds from the sale of state trust land, as authorized by [sections 11 through 17], are not used for the purposes described in [sections 12 and 14], the proceeds from the sale and any earnings on the proceeds must be deposited pursuant to subsection (1) of this section."

**Section 11. Definitions.** As used in [sections 11 through 17], the following definitions apply:

(1) "Isolated parcel" means any state land not possessing a legal right of access by the public.

(2) "Land banking" means a process of selling various parcels of state land and using the proceeds from the sales to purchase other land, easements, or improvements that are likely to provide greater or equal trust revenue, as may be reasonably expected over a 20-year accounting period with an acceptable level of risk, for the affected trust and to diversify the land holdings of the various trusts.

**Section 12. State land bank fund — statutory appropriation — rules.**

(1) There is a state land bank fund. The proceeds from the sale of state trust land authorized by [sections 11 through 17] must be deposited into the state land bank fund. The purpose of the state land bank fund is to temporarily hold proceeds from the sale of trust land pending the purchase of other land, easements, or improvements for the benefit of the beneficiaries of the respective trusts. A separate record of the proceeds received from the sale of trust land for each of the respective trusts must be maintained. Proceeds from the sale of lands that are part of a trust land grant may be used only to purchase land for the same trust.

(2) (a) Proceeds deposited in the state land bank fund, except earnings on those proceeds, are statutorily appropriated, as provided in 17-7-502, to the department for the purposes described in [sections 11 through 17]. All earnings on the proceeds deposited in the state land bank fund are subject to the provisions of Article X, sections 5 and 10, of the Montana constitution.

(b) Except as provided in subsection (2)(c), up to 10% of the proceeds in the state land bank fund may be used by the department to fund the transactional costs of buying, selling, appraising, or marketing real property. Transactional costs may include realtor's fees, title reports, title insurance, legal fees, and other costs that may be necessary to complete a conveyance of real property.

(c) Proceeds from the sale of lands held pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 328, may not be used for any transactional costs or trust administration purposes for those lands.

(d) The department may hold proceeds from the sale of state land in the state land bank fund for a period not to exceed 10 years after the effective date of each sale. If, by the end of the 10th year, the proceeds from the subject land sale have not been encumbered to purchase other lands, easements, or improvements within the state, the proceeds from that sale must be deposited in the public school fund or in the permanent fund of the respective trust as required by law, along with any earnings on the proceeds from the land sale, unless the time period is extended by the legislature.

(3) The board shall adopt rules providing for the implementation and administration of the state land bank fund, purchases, and sales.

**Section 13. Land banking land sales and limitations.** (1) The board may not cumulatively sell or dispose of more than 100,000 acres of state land. Seventy-five percent of the acreage cumulatively sold must be isolated parcels that do not have a legal right of access by the public. At any one time during the life of the land banking process, the board may not sell more than 20,000 acres of state land unless the board has acted to use the revenue from that land to make purchases pursuant to [section 14].

(2) (a) A person bidding to purchase state land offered for sale shall 45 days prior to the day of auction deposit with the department a bid bond in the form of a certified check or cashier's check drawn on any Montana bank equal to at least 50% of the minimum sale price specified by the department pursuant to 77-2-323(1) to guarantee the bidder's payment of the purchase price.

(b) If the current lessee of the land to be sold has initiated the sale as authorized by [section 14], the lessee may cancel the sale by giving notice to the department at least 30 days prior to the day of the auction. When the sale is canceled by the lessee, the lessee shall pay the costs incurred by the department for the preparation of the sale including any costs incurred for preparation of documents required by 75-1-201.

(c) The department shall retain the bid bond of the successful bidder and shall return the bid bonds of the unsuccessful bidders. If the successful bidder fails to comply with the terms of the sale for any reason, the successful bidder's bid bond must be forfeited and credited to the interest and income account of the proper trust.

(3) Except for a sale that is initiated by the lessee of the parcel of land proposed for sale, prior to the proposed sale of any parcel of state land under the land banking process, the board shall give 60 days' notice of the proposed sale to the lessee of the parcel to allow the lessee sufficient time to determine whether the lessee wishes to propose an exchange of the land to the board.

(4) For a sale initiated by the board or the department, the lessee of the land must be afforded all the rights and privileges to match the high bid, as provided in 77-2-324.

**Section 14. Land banking purchases.** (1) The board may select and purchase, lease, receive by donation, hold in trust, or in any manner acquire for and in the name of the state of Montana, in trust for the beneficiaries specified in sections 10 through 19 of The Enabling Act of Congress (approved February 22, 1889, 25 Stat. 676), as amended, any interest in real property and improvements, tracts, and leaseholds of land that the board considers proper in order to best provide prudent, maximum, long-term revenue for the beneficiaries.

(2) Sales of state land may be initiated only by the board, the department, or at the request of a lessee, pursuant to 77-1-202, 77-1-301, 77-2-301, or 77-2-308. The board shall ensure that the full market value of the land sold is realized for each trust by using the appraisal, sale, advertising, and competitive bid procedures contained within 77-2-303, 77-2-321, 77-2-322, 77-2-323, and 77-2-324.

(3) When it is not inconsistent with the purpose of the trust, the board shall purchase land possessing legal access for all legal purposes.

(4) When purchasing land, easements, or improvements for the existing trusts, the board shall develop and apply appraisal and revenue projection procedures to ensure that the land or easements proposed for purchase or that the improvements proposed to be acquired are likely to produce more net revenue for the affected trust than the revenue that was produced from the land that was sold. The board may not purchase land, easements, or improvements pursuant to [sections 11 through 17] unless it has first prudently determined that the land, easements, or improvements are likely to produce a greater or equal annual rate of return, as may be reasonably expected over a 20-year accounting period, with an acceptable level of risk for the affected trust, than the current annual rate of return from the state land that has been sold pursuant to [section 13]. As guidance, the board shall use generally accepted accounting standards and the Uniform Appraisal Standards for Federal Land Acquisitions published by the U.S. department of justice and the appraisal institute.

(5) Prior to purchasing any land, easements, or improvements, the board shall determine that the financial risks and benefits of the purchase are prudent, financially productive investments that are consistent with the board's fiduciary duty as a reasonably prudent trustee of a perpetual trust. For the purposes of implementing [sections 11 through 17], that duty requires the board to:

(a) discharge its duties with the care, skill, prudence, and diligence that a prudent person acting in a similar capacity with the same resources and familiar with similar matters should exercise in the conduct of an enterprise of similar character and aims;

(b) diversify the land holdings of each trust to minimize the risk of loss and maximize the sustained rate of return;

(c) discharge its duties and powers solely in the interest of and for the benefit of the trust managed;

(d) discharge its duties subject to the fiduciary standards set forth in 72-34-114; and

(e) maintain, as closely as possible, the existing land base of each trust, consistent with the state's fiduciary duty.

(6) Prior to purchasing a parcel of land in excess of 160 acres in any particular county, the board shall consult with the county commissioners of the county in which the parcel is located.

**Section 15. Right of access not created.** Nothing in [sections 11 through 17] creates any express or implied right of access, right-of-way, or easement for the benefit of the board, the department, or any purchaser of state land over or through any other property.

**Section 16. Land banking process — time limit — report to environmental quality council.** (1) State land may not be sold through the



land banking process pursuant to [sections 11 through 17] after October 1, 2008. Land banking purchases under [section 14] may continue after October 1, 2008, until all the proceeds in the state land bank fund are expended or revert to the public school fund or the permanent fund of the respective trust pursuant to [section 12(2)(d)].

(2) The department shall provide a report to the environmental quality council by July 1, 2008, that describes the results of the land banking program in detail. At a minimum, the report must summarize the sale and purchase transactions made through the program by type, location, acreage, value, and trust beneficiary. The environmental quality council shall make any recommendations that it determines necessary regarding the implementation of the state land banking process, including recommendations for legislation.

**Section 17. Road easements on state lands.** County roads or easements for county roads on lands purchased from the state of Montana are subject to the provisions of Title 7, chapter 14, part 26, regarding the establishment, alteration, or abandonment of county roads.

**Section 18. Repealer.** Sections 77-2-307 and 77-2-312, MCA, are repealed.

**Section 19. Codification instruction.** [Sections 11 through 17] are intended to be codified as an integral part of Title 77, chapter 2, part 3, and the provisions of Title 77, chapter 2, part 3, apply to [sections 11 through 17].

**Section 20. 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 21. Effective date.** [This act] is effective on passage and approval.

Approved April 17, 2003

## CHAPTER NO. 356

[HB 224]

AN ACT REVISING LAWS RELATING TO STANDING MASTERS; REMOVING THE AUTHORITY OF COUNTIES TO APPOINT STANDING MASTERS; REMOVING THE AUTHORITY OF WATER JUDGES TO SET THE SALARY OF WATER MASTERS; REMOVING THE REQUIREMENT THAT WATER MASTERS PARTICIPATE IN THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; REPEALING SECTIONS 3-5-123 AND 3-7-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Repealer.** Sections 3-5-123 and 3-7-302, MCA, are repealed.

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

Approved April 16, 2003

**CHAPTER NO. 357**

[HB 237]

AN ACT REQUIRING A MOTOR VEHICLE EQUIPPED WITH AN ENGINE COMPRESSION BRAKE DEVICE TO HAVE A MUFFLER; ALLOWING USE OF AN ENGINE COMPRESSION BRAKE DEVICE EQUIPPED WITH A MUFFLER; PROVIDING A PENALTY; AND PROVIDING A DELAYED APPLICABILITY DATE.

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

**Section 1. Engine compression brake device — use.** (1) A commercial motor vehicle, as defined in 61-1-134, equipped with an engine compression brake device must be equipped with a muffler in good working condition to prevent excessive noise.

(2) An operator of a commercial motor vehicle that has an engine compression brake device with a factory-installed muffler or an equivalent after-market muffler may not be prohibited from using the engine compression brake device.

**Section 2. Violation of engine compression brake device provisions.** A person who violates the provisions of [section 1] is guilty of a misdemeanor and upon conviction shall be fined not to exceed \$500.

**Section 3. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 61, chapter 9, part 3, and the provisions of Title 61, chapter 9, part 3, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 61, chapter 9, part 5, and the provisions of Title 61, chapter 9, part 5, apply to [section 2].

**Section 4. Applicability.** [Section 2] applies to violations occurring on or after April 1, 2004.

Approved April 16, 2003

**CHAPTER NO. 358**

[HB 317]

AN ACT ALLOWING A SENTENCING COURT TO REQUIRE A PERSON CONVICTED OF CRUELTY TO ANIMALS TO PAY THE REASONABLE COSTS INCURRED BY A PUBLIC OR PRIVATE ANIMAL CONTROL AGENCY OR HUMANE ANIMAL TREATMENT SHELTER FOR THE CARE OF THE ANIMAL; AMENDING SECTION 45-8-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 45-8-211, MCA, is amended to read:

**“45-8-211. Cruelty to animals — exception.** (1) A person commits the offense of cruelty to animals if without justification the person knowingly or negligently subjects an animal to mistreatment or neglect by:

- (a) overworking, beating, tormenting, injuring, or killing any animal;
- (b) carrying or confining any animal in a cruel manner;

- (c) failing to provide an animal in the person's custody with:
    - (i) proper food, drink, or shelter; or
    - (ii) in cases of immediate, obvious, serious illness or injury, licensed veterinary or other appropriate medical care;
  - (d) abandoning any helpless animal or abandoning any animal on any highway, railroad, or in any other place where it may suffer injury, hunger, or exposure or become a public charge; or
  - (e) promoting, sponsoring, conducting, or participating in an animal race of more than 2 miles, except a sanctioned endurance race.
- (2) (a) A person convicted of the offense of cruelty to animals shall be fined 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 second or subsequent offense of cruelty to animals shall be fined not to exceed \$1,000 or be imprisoned in the state prison for a term not to exceed 2 years, or both.
- (b) If the convicted person is the owner, the person may be required to forfeit to the county in which the person is convicted any animal affected. This provision does not affect the interest of any secured party or other person who has not participated in the offense.
- (3) In addition to the sentence provided in subsection (2), the court may:
- (a) require the defendant to pay all reasonable costs incurred in providing necessary veterinary attention and treatment for any animal affected; ~~and~~
  - (b) *require the defendant to pay all reasonable costs of necessary care of the affected animal that are incurred by a public or private animal control agency or humane animal treatment shelter; and*
  - ~~(b)~~(c) prohibit or limit the defendant's ownership, possession, or custody of animals, as the court believes appropriate during the term of the sentence.
- (4) Nothing in this section prohibits:
- (a) a person from humanely destroying an animal for just cause; or
  - (b) the use of commonly accepted agricultural and livestock practices on livestock."

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

Approved April 17, 2003

## CHAPTER NO. 359

[HB 337]

AN ACT REQUIRING THAT THE EXPENSE OF MOVING UTILITY WIRES AND POLES WHEN RELOCATING A STRUCTURE BE PAID BY THE PERSON, FIRM, OR CORPORATION MOVING THE STRUCTURE; PROVIDING AN EXCEPTION; REQUIRING A PAYMENT TO THE OWNER OF THE WIRES AND POLES IN ADVANCE OF THE MOVE; AMENDING SECTIONS 69-4-602 AND 69-4-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 69-4-602, MCA, is amended to read:

**“69-4-602. Procedure to give required notice Notice of move — cost estimate.** (1) The person, firm, or corporation moving ~~any~~ a house, building, derrick, or other structure shall give the person, firm, or corporation owning or ~~operating~~ controlling the wires, cables, or poles affected by the movement of a structure, at both ~~their~~ the person's, firm's, or corporation's principal office and ~~their~~ nearest office within the state, not less than 10 days' written notice of the proposed time and place of moving a structure.

(2) The owner of the wires, cables, or poles shall give the mover a written estimate of the total cost of all work related to cutting, raising, or moving the ~~wires or poles or raising the wires or cables or moving the poles, including travel time,~~ at least 3 days prior to the move or within 10 days after receipt of the written notice of the move, whichever time comes sooner.

(3) The estimate of the total cost required under this section must be developed in accordance with the cost schedule filed as provided in subsection (4).

(4) A public utility, cable television company, or unregulated telecommunications provider with wires, cables, or poles in Montana shall file with the commission, by April 1 of each year, an application for approval of a cost schedule for labor and equipment for all work related to cutting or raising wires or cables or moving poles. The cost schedule is effective on a temporary basis, subject to a rebate and a surcharge as provided in 69-3-304, 30 days after the filing of a cost schedule and pending a final order of the commission, unless the commission first determines that the cost schedule is above cost.”

**Section 2.** Section 69-4-603, MCA, is amended to read:

**“69-4-603. Procedure to accomplish move — payment of cost.** (1) In order to accomplish moving a house, building, derrick, or other structure through an area in which utility wires, cables, or poles ~~or wires~~ impede the movement, it is the duty of the person, firm, or corporation who owns or controls the ~~poles or wires, cables, or poles~~ and who has received the notice required by 69-4-602 to ~~shall~~ furnish competent workers to raise or cut the wires or cables or move the poles as necessary to facilitate moving the house, building, derrick, or other structure.

(2) ~~The necessary and reasonable expense of raising or cutting the wires or of moving the poles for utilities subject to the jurisdiction of the public service commission must be fixed and determined by the public service commission on the average cost per line or pole for time and materials expended. These costs and expenses must be reviewed biennially. Except as provided in subsections (4) and (5), the necessary and reasonable expense of raising or cutting the wires or of moving the poles must be shared equally by the person, firm, or corporation owning the structure and the person, firm, or corporation owning or operating the wires, cables, or poles required to be moved.~~

(3) ~~The rates and charges of rural cooperative electric utilities, rural cooperative telephone utilities, and other persons who occupy and use utility or cooperative poles may not exceed the charges established by the public service commission for utilities subject to its jurisdiction. The charges assessed by utilities, other than utilities subject to the jurisdiction of the public service commission, must be apportioned as provided in subsection (2).~~

~~(4)(2)~~ (a) Except as provided in subsection ~~(4)(b)~~ ~~(2)(b)~~, to facilitate the movement of a house, building, derrick, or other structure, the necessary and reasonable actual costs of raising or cutting wires or cables or moving poles to facilitate the movement of a house, building, derrick, other structure, or prefabricated structure that is intended to be moved from the place of fabrication, storage facility, or dealer's lot, determined in accordance with the schedule filed under 69-4-602, must be paid by the owner of:

~~(i) a prefabricated structure that is intended to be moved from the place of fabrication; or~~

~~(ii) the sixth and each subsequent structure that exceeds 25 feet in height while being moved and that is to be moved from a single site. When structures are moved in a group or in a continuous caravan formation and when only a single line cut or movement is necessary, the move must count as only a single structure move for purposes of this subsection (4)(a)(ii). For the purposes of this subsection (4)(a)(ii), a single site includes but is not limited to a development complex, housing complex, military base, or institutional complex. The whole of an incorporated municipality is not a single site as the term is used in this subsection mover.~~

(b) The necessary and reasonable actual costs of raising or cutting wires or cables or moving poles to facilitate the movement of a structure, determined in accordance with the schedule filed under 69-4-602, must be shared equally by the mover and the owner of the wires, cables, or poles if the structure is owned by a person for occupancy or use by that person must be shared equally as provided in subsection (2).

~~(5) (a) A person, firm, or corporation who owns or moves a house, building, derrick, or other structure may not raise, cut, or in any way interfere with any poles or wires~~

~~(3) A mover may not raise, cut, or in any way interfere with wires, cables, or poles unless the person, firm, or corporation who owns or controls the poles or wires, cables, or poles refuses, after having been notified as required by 69-4-602, to raise or cut the wires or cables or move the poles.~~

~~(b) When the person who owns or controls the poles or wires refuses to raise or cut the wires or move the poles, the person, firm, or corporation who owns or moves the house, building, derrick, or other structure shall ensure that only competent and experienced workers raise or cut the wires or move the poles.~~

~~(c) The following procedure must be followed:~~

~~(i) The necessary and reasonable expense incurred by the owner or mover of the house, building, derrick, or other structure as a result of raising or cutting the wires or moving the poles must be paid by the owners of the poles or wires handled.~~

~~(ii) The work of raising or cutting the wires or moving the poles must be done in a careful manner.~~

~~(iii) The poles and wires must be promptly replaced and any damage to the poles or wires must be promptly repaired.~~

~~(4) The mover shall make a prepayment of a portion of the total cost estimated under 69-4-602 in advance of the move as follows:~~

~~(a) if the structure is moved through or out of the service territory of the owner of the wires, cables, or poles, 100% of the mover's share pursuant to subsection (2); or~~

(b) *if the structure is delivered to a place within the service territory of the owner of the wires, cables, or poles, 50% of the mover's share pursuant to subsection (2).*

(5) *The owner of the wires, cables, or poles may waive the prepayment requirement or accept a bond or other financial instrument in lieu of payment.*

(6) *The mover shall pay the mover's share of all actual costs under subsection (2) in excess of any prepayment made under subsection (4) within 30 days of the move.*

(7) *If the prepayment made under subsection (4) exceeds the mover's share of actual costs under subsection (2), the owner of the wire, cable, or pole shall refund the difference to the mover within 30 days of the move."*

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

Approved April 17, 2003

## CHAPTER NO. 360

[HB 385]

AN ACT PROVIDING THAT MONTANA NEW MOTOR VEHICLE WARRANTY LAWS APPLY TO MOTOR VEHICLES REGISTERED IN THIS STATE IN ADDITION TO MOTOR VEHICLES SOLD IN THIS STATE; INCLUDING MOTORCYCLES AS VEHICLES COVERED BY REGISTRATION; SUBSTITUTING SELECTION OF AN ARBITRATOR FOR SELECTION OF AN ARBITRATION PANEL AND DECREASING THE NUMBER OF ARBITRATORS FROM THREE TO ONE; AND AMENDING SECTIONS 61-4-501, 61-4-516, 61-4-518, AND 61-4-519, MCA.

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

**Section 1.** Section 61-4-501, MCA, is amended to read:

**"61-4-501. Definitions.** For purposes of this part, the following definitions apply:

(1) "Collateral charge" means all governmental charges, including but not limited to sales tax, property tax, license and registration fees, and fees in lieu of tax.

(2) "Consumer" means the purchaser, other than for purposes of resale, of a motor vehicle that has not been brought into nonconformity as the result of abuse, neglect, or unauthorized modifications or alterations by the purchaser, any person to whom the motor vehicle is transferred during the duration of an express warranty applicable to the motor vehicle, or any other person entitled by the terms of the warranty to the benefits of its provisions.

(3) "Incidental damage" means incidental and consequential damage as defined in 30-2-715.

(4) "Manufacturer" has the meaning applied to that word in 61-4-201.

(5) (a) "Motor vehicle" means a vehicle, including the nonresidential portion of a motor home as defined in 61-1-130, propelled by its own power, designed primarily to transport persons or property upon the public highways, and sold or registered in this state.

(b) The term does not include a truck with 10,000 pounds or more gross vehicle weight rating or a motorcycle as defined in 61-1-105. Motor vehicle does not include components, systems, fixtures, appliances, furnishings, accessories, and features that are designed, used, and maintained primarily for residential purposes.

(6) "Reasonable allowance for use" is an amount directly attributable to use of the motor vehicle by the consumer and any previous consumers prior to the first written notice of the nonconformity to the manufacturer or its agent and during any subsequent period when the vehicle is not out of service because of nonconformity. The reasonable allowance for use shall *must* be computed by multiplying the total contract price of the vehicle by a fraction having as its denominator 100,000 and having as its numerator the number of miles that the vehicle traveled prior to the manufacturer's acceptance of its return.

(7) "Warranty period" means the period ending 2 years after the date of the original delivery to the consumer of a new motor vehicle or during the first 18,000 miles of operation, whichever is earlier."

**Section 2.** Section 61-4-516, MCA, is amended to read:

**"61-4-516. Composition of arbitration panel Selection of arbitrator.** ~~An arbitration panel hearing arbitrator for a grievance under this part must consist of three members be chosen by the department of administration. One member must be chosen by the consumer, one member must be chosen by the manufacturer, and one member must be chosen by mutual agreement of the parties. The department of administration may shall maintain a list of persons willing to serve on panels from which the third member may be chosen as an arbitrator."~~

**Section 3.** Section 61-4-518, MCA, is amended to read:

**"61-4-518. Arbitration — role of department of administration — expert.** (1) The department of administration shall investigate, gather, and organize all information necessary for a fair and timely decision in each dispute. The department of administration may, on behalf of the ~~arbitration panel arbitrator~~, issue subpoenas to compel the attendance of witnesses and the production of documents, papers, and records relevant to the dispute.

(2) If requested by the ~~panel arbitrator~~, the department of administration may forward a copy of all written testimony and documentary evidence to an independent technical expert certified by the national institute of automotive excellence. The expert may review the material and be available to advise and consult with the ~~panel arbitrator~~. The expert, *at the arbitrator's request*, may ~~sit as a nonvoting member of the panel be present~~ whenever oral testimony is presented."

**Section 4.** Section 61-4-519, MCA, is amended to read:

**"61-4-519. Action by arbitration panel arbitrator — decision.** (1) The ~~arbitration panel arbitrator~~ shall, as expeditiously as possible, but not later than 60 days after the department of administration has accepted a complaint, render a fair decision based on the information gathered and disclose ~~its~~ *the arbitrator's* findings and ~~its~~ reasoning to the parties.

(2) The decision must provide appropriate remedies, including but not limited to:

(a) repair of the vehicle;

(b) replacement of the vehicle with an identical vehicle or a comparable vehicle acceptable to the consumer;

(c) refund as provided in 61-4-503(2);

(d) any other remedies available under the applicable warranties or 15 U.S.C. 2301 through 2312, as in effect on October 1, 1983; or

(e) reimbursement of expenses and costs to the prevailing party.

(3) The decision must specify a date for performance and completion of all awarded remedies. The department of administration shall contact the prevailing party within 10 working days after the date for performance to determine whether performance has occurred. The parties shall act in good faith in abiding by any decision. In addition, if the decision is not accepted, the parties shall follow the provisions of Title 27, chapter 5. If it is determined by the court that the appellant has acted without good cause in bringing an appeal of an award, the court, in its discretion, may grant to the respondent costs and reasonable attorney fees."

Approved April 17, 2003

## **CHAPTER NO. 361**

[HB 437]

AN ACT GENERALLY REVISING LAWS GOVERNING THE ENVIRONMENT; PROVIDING THAT THE ENACTMENT OF CERTAIN LEGISLATION IS THE LEGISLATIVE IMPLEMENTATION OF ARTICLE II, SECTION 3, AND ARTICLE IX OF THE MONTANA CONSTITUTION AND PROVIDING THAT COMPLIANCE WITH THE REQUIREMENTS OF THE LEGISLATIVE IMPLEMENTATION CONSTITUTES ADEQUATE REMEDIES AS REQUIRED BY THE CONSTITUTION; REQUIRING THAT A CHALLENGE TO A PERMIT ISSUED PURSUANT TO THE AIR QUALITY LAWS OR OPENCUT MINING RECLAMATION LAWS, A CHALLENGE TO A LICENSE OR PERMIT ISSUED PURSUANT TO THE METAL MINE RECLAMATION LAWS, A CHALLENGE TO A CERTIFICATE ISSUED PURSUANT TO THE MONTANA MAJOR FACILITY SITING ACT, OR AN AMENDMENT ISSUED PURSUANT TO THE OPENCUT MINING RECLAMATION LAWS MUST PROVIDE FOR COSTS AND ATTORNEY FEES IF THE CHALLENGE WAS FOR AN IMPROPER PURPOSE; PROVIDING THAT AN ACTION CHALLENGING THE ISSUANCE OF A PERMIT UNDER THE AIR QUALITY LAWS, THE ISSUANCE OF AN AMENDMENT UNDER THE OPENCUT MINING RECLAMATION LAWS, THE ISSUANCE OF A LICENSE OR PERMIT UNDER THE METAL MINE RECLAMATION LAWS, A PETITION FOR REVIEW CHALLENGING A LICENSING OR PERMITTING DECISION UNDER THE MONTANA ADMINISTRATIVE PROCEDURE ACT, AN ARBITRATION ACTION UNDER THE NATURAL STREAMBED AND LAND PRESERVATION ACT OF 1975, ANY ACTION UNDER THE HAZARDOUS WASTE FACILITIES LAWS OR THE MONTANA ENVIRONMENTAL POLICY ACT, ENTRY AND INSPECTION UNDER THE COAL AND URANIUM MINE RECLAMATION LAWS, OR A CERTIFICATE ISSUED UNDER THE MAJOR FACILITY SITING LAWS MUST BE BROUGHT IN THE COUNTY IN WHICH THE ACTIVITY SUBJECT TO THE PERMIT, PETITION FOR REVIEW, AMENDMENT, LICENSE, ARBITRATION, ACTION, CERTIFICATE, OR



INSPECTION WILL OCCUR; PROVIDING THAT FOR AN ACTIVITY THAT WILL OCCUR IN MORE THAN ONE COUNTY, ANY COUNTY IN WHICH THE ACTIVITY WILL OCCUR IS A PROPER VENUE; PROVIDING THAT CERTAIN PERSONS MAY NOT CONDUCT REMEDIAL ACTIONS CONCERNING CLEANUP ACTIVITIES AT ANY FACILITY THAT IS SUBJECT TO AN ADMINISTRATIVE OR JUDICIAL ORDER; AMENDING SECTIONS 2-4-702, 2-4-704, 50-40-102, 75-1-102, 75-1-103, 75-2-102, 75-2-104, 75-5-101, 75-5-102, 75-7-102, 75-7-121, 75-10-202, 75-10-402, 75-10-420, 75-10-706, 75-10-902, 75-11-202, 75-11-301, 75-11-502, 75-20-102, 75-20-201, 75-20-401, 75-20-406, 76-6-102, 76-7-102, 82-4-102, 82-4-202, 82-4-239, 82-4-252, 82-4-301, 82-4-349, 82-4-402, 82-4-427, 82-4-436, AND 87-5-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

WHEREAS, Article II, section 3, of the Montana Constitution enumerates certain inalienable individual rights, including the right to a clean and healthful environment, the right of pursuing life's basic necessities, the right of enjoying and defending an individual's life and liberty, the right of acquiring, possessing, and protecting property, and the right of seeking individual safety, health, and happiness in all lawful ways; and

WHEREAS, the constitutionally enumerated rights are by their very nature bound to result in competing interests in specific fact situations; and

WHEREAS, Article IX, section 1, of the Montana Constitution provides that the state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations and directs the Legislature to provide for the administration and enforcement of this duty and also directs the Legislature to provide adequate remedies for the protection of the environmental life support system from degradation and to provide adequate remedies to prevent unreasonable depletion and degradation of natural resources; and

WHEREAS, the Legislature has reviewed the intent of the framers of the 1972 Montana Constitution as evidenced in the verbatim transcripts of the constitutional convention; and

WHEREAS, there is no indication that one enumerated inalienable right is intended to supersede other inalienable rights, including the right to use property in all lawful means; and

WHEREAS, the Legislature, mindful of its constitutional obligation to provide for the administration and enforcement of the constitution, has enacted a comprehensive set of laws to accomplish the goals of the constitution, including the Montana Clean Indoor Air Act of 1979, Title 50, chapter 40, part 1, MCA; the Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, MCA; the Clean Air Act of Montana, Title 75, chapter 2, parts 1 through 4, MCA; water quality laws, Title 75, chapter 5, MCA; The Natural Streambed and Land Preservation Act of 1975, Title 75, chapter 7, part 1, MCA; The Montana Solid Waste Management Act, Title 75, chapter 10, part 2, MCA; The Montana Hazardous Waste Act, Title 75, chapter 10, part 4, MCA; the Comprehensive Environmental Cleanup and Responsibility Act, Title 75, chapter 10, part 7, MCA; the Montana Megalndfill Siting Act, sections 75-10-901 through 75-10-945, MCA; the Montana Underground Storage Tank Installer and Inspector Licensing and Permitting Act, Title 75, chapter 11, part 2, MCA; the Montana Underground Storage Tank Act, Title 75, chapter 11, part 5, MCA; the Montana Major Facility Siting Act, Title 75, chapter 20, MCA; the

Open-Space Land and Voluntary Conservation Easement Act, Title 76, chapter 6, MCA; the Environmental Control Easement Act, Title 76, chapter 7, MCA; The Strip and Underground Mine Siting Act, Title 82, chapter 4, part 1, MCA; The Montana Strip and Underground Mine Reclamation Act, Title 82, chapter 4, part 2, MCA; The Opencut Mining Act, Title 82, chapter 4, part 4, MCA; and The Nongame and Endangered Species Conservation Act, Title 87, chapter 5, part 1, MCA.

*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) A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review under this chapter. This section does not limit utilization 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 subsection (2)(c), proceedings for review must be instituted by filing a petition in district court within 30 days after service of the final decision of the agency or, if a rehearing is requested, within 30 days after the 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 ~~he is~~ 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.*

(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, 27-19-316, and 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 ~~taxed~~ *required* by the court ~~for~~ *to* pay the additional costs. The court may require or permit subsequent corrections or additions to the record.”

**Section 2. Determination of constitutionality.** In any action filed in district court invoking the court’s original jurisdiction to challenge the constitutionality of a licensing or permitting decision made pursuant to Title 75 or Title 82 or activities taken pursuant to a license or permit issued under Title 75 or Title 82, the plaintiff shall first establish the unconstitutionality of the underlying statute.

**Section 3.** Section 2-4-704, MCA, is amended to read:

**“2-4-704. Standards of review.** (1) The review ~~shall~~ *must* be conducted by the court without a jury and ~~shall~~ *must* be confined to the record. In cases of alleged irregularities in procedure before the agency not shown in the record, proof ~~thereof~~ *of the irregularities* may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

(2) The court may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because:

- (a) the administrative findings, inferences, conclusions, or decisions are:
  - (i) in violation of constitutional or statutory provisions;
  - (ii) in excess of the statutory authority of the agency;
  - (iii) made upon unlawful procedure;
  - (iv) affected by other error of law;
  - (v) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record;
  - (vi) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
- (b) findings of fact, upon issues essential to the decision, were not made although requested.

(3) *If a petition for review is filed challenging a licensing or permitting decision made pursuant to Title 75 or Title 82 on the grounds of unconstitutionality, as provided in subsection (2)(a)(i), the petitioner shall first establish the unconstitutionality of the underlying statute.”*

**Section 4.** Section 50-40-102, MCA, is amended to read:

**“50-40-102. Purpose Intent — purpose.** *The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Montana Clean Indoor Air Act of 1979. It is the legislature’s intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system. The purpose of this part is to protect the health of nonsmokers in public places and to provide for reserved areas in some public places for those who choose to smoke.”*

**Section 5.** Section 75-1-102, MCA, is amended to read:

**“75-1-102. Purpose Intent — purpose.** (1) *The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Montana Environmental Policy Act. The Montana Environmental Policy Act is procedural, and it is the legislature’s intent that the requirements of parts 1 through 3 of this chapter provide for the adequate review of state actions in order to ensure that environmental attributes are fully considered.*

(2) *The purpose of parts 1 through 3 of this chapter is to declare a state policy that will encourage productive and enjoyable harmony between humans and their environment, to protect the right to use and enjoy private property free of undue government regulation, to promote efforts that will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of humans, to enrich the understanding of the ecological systems and natural resources important to the state, and to establish an environmental quality council.”*

**Section 6.** Section 75-1-103, MCA, is amended to read:

**“75-1-103. Policy.** (1) The legislature, recognizing the profound impact of human activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances, recognizing the critical importance of restoring and maintaining environmental quality to the overall welfare and human development, and further recognizing that governmental regulation may unnecessarily restrict the use and enjoyment of private property, declares that it is the continuing policy of the state of Montana, in cooperation with the federal government, local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which humans and nature can coexist in productive harmony, to recognize the right to use and enjoy private property free of undue government regulation, and to fulfill the social, economic, and other requirements of present and future generations of Montanans.

(2) In order to carry out the policy set forth in parts 1 through 3, it is the continuing responsibility of the state of Montana to use all practicable means consistent with other essential considerations of state policy to improve and coordinate state plans, functions, programs, and resources so that the state may:

- (a) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
- (b) ensure for all Montanans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;
- (c) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
- (d) protect the right to use and enjoy private property free of undue government regulation;
- (e) preserve important historic, cultural, and natural aspects of our unique heritage and maintain, wherever possible, an environment that supports diversity and variety of individual choice;

(f) achieve a balance between population and resource use that will permit high standards of living and a wide sharing of life's amenities; and

(g) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(3) The legislature recognizes that each person is entitled to a healthful environment, that each person is entitled to use and enjoy that person's private property free of undue government regulation, *that each person has the right to pursue life's basic necessities*, and that each person has a responsibility to contribute to the preservation and enhancement of the environment. *The implementation of these rights requires the balancing of the competing interests associated with the rights by the legislature in order to protect the public health, safety, and welfare.*"

**Section 7.** Section 75-2-102, MCA, is amended to read:

**"75-2-102. Policy Intent — policy and purpose.** (1) *The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution has enacted the Clean Air Act of Montana. It is the legislature's intent that the requirements of parts 1 through 4 of this chapter 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) ~~It is hereby declared to be~~ the public policy of this state and the purpose of this chapter to achieve and maintain ~~such~~ levels of air quality ~~as that~~ will protect human health and safety and, to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of this state, and facilitate the enjoyment of the natural attractions of this state. *This policy must be balanced by the legislature with the policy of protecting the ability of the people to pursue life's basic necessities and to acquire property and to use that property in all lawful ways.*

~~(2)(3) It is also declared that local~~ Local and regional air pollution control programs ~~are to~~ must be supported to the extent practicable as essential instruments for the securing and maintenance of appropriate levels of air quality.

~~(3)(4)~~ To these ends it is the purpose of this chapter to:

(a) provide for a coordinated statewide program of air pollution prevention, abatement, and control;

(b) provide for an appropriate distribution of responsibilities among the state and local units of government;

(c) facilitate cooperation across jurisdictional lines in dealing with problems of air pollution not confined within single jurisdictions; and

(d) provide a framework within which all values may be balanced in the public interest."

**Section 8.** Section 75-2-104, MCA, is amended to read:

**"75-2-104. Limitations — personal cause of action unabridged — venue.** (1) ~~Nothing in this~~ This chapter ~~shall~~ may not be construed to:

~~(4)(a)~~ grant to the board any jurisdiction or authority with respect to air contamination existing solely within commercial and industrial plants, works, or shops;

~~(2)(b)~~ affect the relations between employers and employees with respect to or arising out of any condition of air contamination or air pollution;

~~(3)(c)~~ supersede or limit the applicability of any law or ordinance relating to sanitation, industrial health, or safety; or

~~(4)(d)~~ abridge, limit, impair, create, enlarge, or otherwise affect substantively or procedurally the right of a person to damages or other relief on account of injury to persons or property and to maintain an action or other appropriate proceeding.

*(2) A judicial challenge to a permit issued pursuant to this chapter by a party other than the permit applicant or permitholder must include the party to whom the permit was issued unless otherwise agreed to by the permit applicant or permitholder. All judicial challenges of permits for projects with a project cost, as determined under 75-1-203, of more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action.*

*(3) An action to challenge a permit decision pursuant to this chapter must be brought in the county in which the permitted activity will occur. If an activity will occur in more than one county, the action may be brought in any of the counties in which the activity will occur."*

**Section 9.** Section 75-5-101, MCA, is amended to read:

**"75-5-101. Policy.** It is the public policy of this state to:

(1) conserve water by protecting, maintaining, and improving the quality and potability of water for public water supplies, wildlife, fish and aquatic life, agriculture, industry, recreation, and other beneficial uses;

(2) provide a comprehensive program for the prevention, abatement, and control of water pollution; and

*(3) balance the inalienable rights to pursue life's basic necessities and possess and use property in lawful ways with the policy of preventing, abating, and controlling water pollution in implementing the program referred to in subsection (2)."*

**Section 10.** Section 75-5-102, MCA, is amended to read:

**"75-5-102. Purpose Intent — purpose — rights of action not abridged.**

(1) *The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted this chapter. It is the legislature's intent that the requirements of this chapter 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. A purpose of this chapter is to provide additional and cumulative remedies to prevent, abate, and control the pollution of state waters.*

(2) *This chapter does not abridge or alter rights of action or remedies in equity or under the common law or statutory law, criminal or civil, nor does this chapter or an act done under it estop the state or a municipality or person, as owner of water rights or otherwise, in the exercise of his the person's rights in equity or under the common law or statutory law to suppress nuisances or to abate pollution."*

**Section 11.** Section 75-7-102, MCA, is amended to read:

**“75-7-102. Policy Intent — policy.** (1) *The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted The Natural Streambed and Land Preservation Act of 1975. 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) *It is the policy of the state of Montana that its natural rivers and streams and the lands and property immediately adjacent to them within the state are to be protected and preserved to be available in their natural or existing state and to prohibit unauthorized projects and, in so doing, to keep soil erosion and sedimentation to a minimum, except as may be necessary and appropriate after due consideration of all factors involved. Further, it is the policy of this state to recognize the needs of irrigation and agricultural use of the rivers and streams of the state of Montana and to protect the use of water for any useful or beneficial purpose as guaranteed by The Constitution of the State of Montana.”*

**Section 12.** Section 75-7-121, MCA, is amended to read:

**“75-7-121. Review.** Any review of final action by the supervisors under 75-7-112 or 75-7-113 must be by arbitration. Judicial review of an arbitration action is under the provisions of Title 27, chapter 5, part 3, *and must be brought in the county where the action is proposed to occur.”*

**Section 13.** Section 75-10-202, MCA, is amended to read:

**“75-10-202. Legislative intent, findings, and policy.** (1) *The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted The Montana Solid Waste Management Act. 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) *It is hereby found and declared that the health and welfare of Montana citizens are being endangered by improperly operated solid waste management systems and by the improper and unregulated disposal of wastes. It is declared the public policy of this state to control solid waste management systems to protect the public health and safety and to conserve natural resources whenever possible.”*

**Section 14.** Section 75-10-402, MCA, is amended to read:

**“75-10-402. Findings Intent, findings, and purpose.** (1) *The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Montana Hazardous Waste Act. 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 safe and proper management of hazardous wastes and used oil, the permitting of hazardous waste facilities, and the siting of facilities are matters for statewide regulation and are environmental issues that should properly be addressed and controlled by the state rather than by the federal government.*

~~(2)~~(3) It is the purpose of this part and it is the policy of this state to protect the public health and safety, the health of living organisms, and the environment from the effects of the improper, inadequate, or unsound management of hazardous wastes and used oil; to establish a program of regulation over used oil and the generation, storage, transportation, treatment, and disposal of hazardous wastes; to ensure the safe and adequate management of hazardous wastes and used oil within this state; and to authorize the department to adopt, administer, and enforce a hazardous waste program pursuant to the federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 through 6987), as amended.”

**Section 15.** Section 75-10-420, MCA, is amended to read:

**“75-10-420. Venue for legal actions.** All legal actions affecting hazardous waste management facilities in the state must be brought in the county in which the facility is located *or is proposed to be located.*”

**Section 16.** Section 75-10-706, MCA, is amended to read:

**“75-10-706. Purpose — intent** (1) The purposes of this part are to:

~~(1)~~(a) protect the public health and welfare of all Montana citizens against the dangers arising from releases of hazardous or deleterious substances;

~~(2)~~(b) encourage private parties to clean up sites within the state at which releases of hazardous or deleterious substances have occurred, resulting in adverse impacts on the health and welfare of the citizens of the state and on the state’s natural, environmental, and biological systems; and

~~(3)~~(c) provide for funding to study, plan, and undertake the rehabilitation, removal, and cleanup of sites within the state at which no voluntary action has been taken.

*(2) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Comprehensive Environmental Cleanup and Responsibility Act. 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.*

*(3) A person who is not subject to an administrative or judicial order may not conduct any remedial action at any facility that is subject to an administrative or judicial order issued pursuant to this part without the written permission of the department. Remedial action performed in accordance with this part is intended to provide for the protection of the environmental life support system from degradation and to prevent unreasonable depletion and degradation of natural resources.”*

**Section 17.** Section 75-10-902, MCA, is amended to read:

**“75-10-902. Purpose Intent — purpose.** (1) *The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Montana Megalandfill Siting Act. It is the legislature’s intent that the requirements of the Megalandfill Siting Act 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.*

~~(1)~~(2) It is the constitutionally declared policy of this state to maintain and improve a clean and healthful environment for present and future generations,



to protect the environment from degradation and prevent unreasonable depletion and degradation of natural resources, and to provide for administration and enforcement to attain these objectives.

~~(2)~~(3) The construction of solid waste facilities that dispose of over 200,000 tons of waste a year (megalandfills) may be necessary to meet increasing state and national needs for solid waste disposal capacity. However, ~~due to~~ *because of* the volume of waste processed, megalandfills may adversely affect the environment, surrounding communities, and the welfare of the citizens of this state. Therefore, it is necessary to ensure that the location, construction, and operation of megalandfills will produce minimal adverse effects on the environment and upon the citizens of this state by providing that a megalandfill may not be constructed or operated within this state without a certificate of site acceptability pursuant to 75-10-916 and a license to operate acquired pursuant to 75-10-221 and 75-10-933.”

**Section 18.** Section 75-11-202, MCA, is amended to read:

**“75-11-202. Findings Intent, findings and purpose.** (1) *The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Montana Underground Storage Tank Installer and Inspector Licensing and Permitting Act. 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.*

~~(1)~~(2) Leaking underground storage tank systems have been identified as a significant source of underground contamination and as a potential hazard for fire and explosion. Government and industry studies show that a major cause of leaking underground storage tanks is improper installation or closure. Proper installation, closure, and inspection require specialized knowledge, training, and experience.

~~(2)~~(3) To protect the health of Montana citizens and the quality of state waters and other natural resources, it is the intent of the legislature to require permits for the installation or closure of underground storage tank systems; to limit the conduct of these activities to persons with demonstrated competence, training, and experience; and to provide for permitting, licensing, and inspection activities.”

**Section 19.** Section 75-11-301, MCA, is amended to read:

**“75-11-301. Findings 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.*

~~(1)~~(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.

~~(2)~~(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.

~~(3)~~(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.

~~(4)~~(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. ~~The fee is intended to implement the legislature's duty to provide for the administration and enforcement of maintaining and improving a clean and healthful environment for present and future generations, as required by Article IX, section 1, of the Montana constitution.~~

~~(5)~~(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 20.** Section 75-11-502, MCA, is amended to read:

**“75-11-502. Findings Intent, findings, and purpose.** (1) *The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Montana Underground Storage Tank Act. 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 petroleum products and hazardous substances stored in underground tanks are regulated under the federal Resource Conservation and Recovery Act of 1976, as amended, and must be addressed and controlled properly by the state under this part. It is the purpose of this part to authorize the department to establish, administer, and enforce an underground storage tank leak prevention program for these regulated substances. The department may use the authority provided in this part and other appropriate authority provided by law to remedy violations of requirements established under this part.*”

**Section 21.** Section 75-20-102, MCA, is amended to read:

**“75-20-102. Policy, intent, and legislative findings.** (1) *The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Montana Major Facility Siting*

*Act. It is the legislature's intent that the requirements of this chapter 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.*

~~(1)~~(2) It is the constitutionally declared policy of this state to maintain and improve a clean and healthful environment for present and future generations, to protect the environmental life-support system from degradation and prevent unreasonable depletion and degradation of natural resources, and to provide for administration and enforcement to attain these objectives.

~~(2)~~(3) The legislature finds that the construction of additional electric transmission facilities, pipeline facilities, or geothermal facilities may be necessary to meet the increasing need for electricity, energy, and other products and that these facilities have an effect on the environment, an impact on population concentration, and an effect on the welfare of the citizens of this state. Therefore, it is necessary to ensure that the location, construction, and operation of electric transmission facilities, pipeline facilities, or geothermal facilities will not produce unacceptable adverse effects on the environment and upon the citizens of this state by providing that a electric transmission facility, pipeline facility, or geothermal facility may not be constructed or operated within this state without a certificate of environmental compatibility acquired pursuant to this chapter.

~~(3)~~(4) The legislature also finds that it is the purpose of this chapter to:

(a) ensure protection of the state's environmental resources, including but not limited to air, water, animals, plants, and soils;

(b) ensure consideration of socioeconomic impacts;

(c) provide citizens with the opportunity to participate in facility siting decisions; and

(d) establish a coordinated and efficient method for the processing of all authorizations required for regulated facilities under this chapter."

**Section 22.** Section 75-20-201, MCA, is amended to read:

**"75-20-201. Certificate required — operation in conformance — certificate for nuclear facility — applicability to federal facilities.** (1) Except for a facility under diligent onsite physical construction or in operation on January 1, 1973, a person may not commence to construct a facility in the state without first applying for and obtaining a certificate of environmental compatibility issued with respect to the facility by the department.

(2) A facility with respect to which a certificate is issued may not be constructed, operated, or maintained except in conformity with the certificate and any terms, conditions, and modifications contained within the certification.

(3) A certificate may only be issued pursuant to this chapter.

(4) If the department decides to issue a certificate for a nuclear facility, it shall report the recommendation to the applicant and may not issue the certificate until the recommendation is approved by a majority of the voters in a statewide election called by initiative or referendum according to the laws of this state.

(5) A person that proposes to construct an energy-related project that is not defined as a facility pursuant to 75-20-104(8) may petition the department to review the energy-related project under the provisions of this chapter.

(6) This chapter applies, to the fullest extent allowed by federal law, to all federal facilities and to all facilities over which an agency of the federal government has jurisdiction.

(7) *All judicial challenges of certificates for projects with a project cost, as determined under 75-1-203, of more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action.*

**Section 23.** Section 75-20-401, MCA, is amended to read:

**“75-20-401. Additional requirements by other governmental agencies not permitted after issuance of certificate — exceptions — venue for challenging certificate issuance.** (1) Notwithstanding any other law, ~~no~~ a state or regional agency or municipality or other local government may not require any approval, consent, permit, certificate, or other condition for the construction, operation, or maintenance of a facility authorized by a certificate issued pursuant to this chapter, except that the department and board retain the authority that they have or may be granted to determine compliance of the proposed facility with state and federal standards and implementation plans for air and water quality and to enforce those standards.

(2) This chapter does not prevent the application of state laws for the protection of employees engaged in the construction, operation, or maintenance of a facility.

(3) *A judicial challenge to a certificate issued pursuant to this chapter by a party other than the certificate holder or applicant must include the party to whom the certificate was issued as provided in this chapter unless otherwise agreed to by the certificate holder or applicant. All judicial challenges of certificates for projects with a project cost, as determined under 75-1-203, of more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action.*

(4) *An action to challenge the issuance of a certificate pursuant to this chapter must be brought in the county in which the activity authorized by the certificate will occur. If an activity will occur in more than one county, the action may be brought in any of the counties in which the activity will occur.*

**Section 24.** Section 75-20-406, MCA, is amended to read:

**“75-20-406. Judicial review of board decisions.** (1) A person aggrieved by the final decision of the board on an application for a certificate may obtain judicial review of that decision by the filing of a petition in a state district court of competent jurisdiction. *A challenge to the issuance of a certificate must be brought in the county in which the activity authorized by the certificate will occur. If an activity will occur in more than one county, the action may be brought in any of the counties in which the activity will occur.*

(2) The judicial review procedure is the procedure for contested cases under the Montana Administrative Procedure Act.

(3) *A judicial challenge to a certificate issued pursuant to this chapter by a party other than the certificate holder or applicant must include the party to*

whom the certificate was issued as provided in this chapter unless otherwise agreed to by the certificate holder or applicant. All judicial challenges of certificates for projects with a project cost, as determined under 75-1-203, of more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action.”

**Section 25.** Section 76-6-102, MCA, is amended to read:

**“76-6-102. Findings Intent, findings and policy.** (1) *The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Open-Space Land and Voluntary Conservation Easement Act. It is the legislature’s intent that the requirements of this chapter 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:

(1)(a) the rapid growth and spread of urban development are creating critical problems of service and finance for the state and local governments;

(2)(b) the present and future rapid population growth in urban areas is creating severe problems of urban and suburban living;

(3)(c) this population spread and its attendant development are disrupting and altering the remaining natural areas, biotic communities, and geological and geographical formations and thereby providing the potential for the destruction of scientific, educational, aesthetic, and ecological values;

(4)(d) the present and future rapid population spread throughout the state of Montana into its open spaces is creating serious problems of lack of open space and overcrowding of the land;

(5)(e) to lessen congestion and to preserve natural, ecological, geographical, and geological elements, the provision and preservation of open-space lands are necessary to secure park, recreational, historic, and scenic areas and to conserve the land, its biotic communities, its natural resources, and its geological and geographical elements in their natural state;

(6)(f) the acquisition or designation of interests and rights in real property by certain qualifying private organizations and by public bodies to provide or preserve open-space land is essential to the solution of these problems, the accomplishment of these purposes, and the health and welfare of the citizens of the state;

(7)(g) the exercise of authority to acquire or designate interests and rights in real property to provide or preserve open-space land and the expenditure of public funds for these purposes would be for a public purpose; and

(8)(h) the statutory provision enabling certain qualifying private organizations to acquire interests and rights in real property to provide or preserve open-space land is in the public interest.”

**Section 26.** Section 76-7-102, MCA, is amended to read:

**“76-7-102. Findings Intent, findings and purpose.** (1) *The legislature, mindful of its constitutional obligations under Article II, section 3, and Article*

*IX of the Montana constitution, has enacted the Environmental Control Easement Act. It is the legislature's intent that the requirements of this chapter 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.*

~~(1)~~(2) The legislature finds that:

(a) numerous sites throughout the state contain or may contain hazardous wastes or substances that may threaten the public health, safety, or welfare or the environment if certain uses are permitted on these sites or if certain activities are not performed on these sites;

(b) at some sites, protection of the public health, safety, or welfare or the environment may be enhanced by the application and enforcement of certain restrictions on the future use of the site or requirements for performance of certain activities;

(c) the creation of an enforceable easement mechanism for imposing restrictions on the use of a site and requiring performance of operations and maintenance activities may help protect the public health, safety, and welfare and the environment by:

(i) preventing or minimizing the exposure of the public to hazardous wastes or substances;

(ii) preventing the disturbance of important features of remediation work and remedial technologies employed at the site;

(iii) ensuring that the presence of hazardous wastes or substances and the features of remediation work and remedial technologies are properly considered in the future use or development of a site; or

(iv) requiring the performance of certain activities or the prohibition or limitation of certain activities, with respect to the site; and

(d) the expenditure of public funds for the acquisition or designation of interests and rights in real property to protect the public health, safety, and welfare and the environment is in the public's interest.

~~(2)~~(3) It is the purpose of this chapter to authorize and enable federal public entities, other public bodies, and certain qualifying private organizations to provide for:

(a) the monitoring and protection of environmental control sites to ensure that those sites are not used for purposes that may threaten the public health, safety, or welfare or the environment;

(b) a process of reviewing the need for specialized construction, development, use, and safety measures if the owner or user of an environmental control site proposes a new use for which any contamination might present a risk to the public health, safety, or welfare or the environment; and

(c) a mechanism for prohibiting or limiting certain activities or requiring certain activities on an environmental control site to enhance protection of the public health, safety, or welfare or the environment."

**Section 27.** Section 82-4-102, MCA, is amended to read:

**"82-4-102. Policy Intent — findings — policy and purpose.** (1) *The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted The Strip and Underground Mine Siting Act. 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.*

~~(1)~~(2) It is the policy of this state to 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)~~(3) It is the purpose of this part:

(a) to vest in the department the authority to review new strip-mine and new underground-mine site locations and reclamation plans and either approve or disapprove ~~such~~ those locations and plans and to exercise general administration and enforcement of this part;

(b) to vest in the board the authority to adopt rules;

(c) to satisfy the requirement of Article IX, section 2, of the constitution of this state; that all lands disturbed by the taking of natural resources be reclaimed; and

(d) to ~~insure~~ ensure that adequate information is available on areas proposed for strip mining or underground mining so that mining and reclamation plans may be properly formulated to accommodate areas that are suitable for strip mining or underground mining.

~~(3)~~(4) This part is ~~deemed to be~~ an exercise of the general police power to provide for the health and welfare of the people."

**Section 28.** Section 82-4-202, MCA, is amended to read:

**"82-4-202. Policy Intent — policy — findings.** (1) *The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted The Montana Strip and Underground Mine Reclamation Act. 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.*

~~(1)~~(2) It is the declared policy of this state and its people to:

(a) maintain and improve the state's clean and healthful environment for present and future generations;

(b) protect its environmental life-support system from degradation;

(c) prevent unreasonable degradation of its natural resources;

(d) restore, enhance, and preserve its scenic, historic, archaeological, scientific, cultural, and recreational sites;

(e) demand effective reclamation of all lands disturbed by the taking of natural resources and maintain state administration of the reclamation program;

(f) require the legislature to provide for proper administration and enforcement, create adequate remedies, and set effective requirements and standards ~~especially as to reclamation of disturbed lands~~, in order to achieve the ~~mentioned~~ objectives enumerated in this subsection (2); and

(g) provide for the orderly development of coal resources through strip or underground mining to ~~assure~~ ensure the wise use of these resources and prevent the failure to conserve coal.

~~(2)~~(3) The legislature hereby finds and declares that:

(a) in order to achieve the ~~aforementioned~~ policy objectives *enumerated in subsection (2)*, promote the health and welfare of the people, control erosion and pollution, protect domestic stock and wildlife, preserve agricultural and recreational productivity, save cultural, historic, and aesthetic values, and ~~assure~~ ensure a long-range dependable tax base, it is reasonably necessary to require, after March 16, 1973, that:

(i) all strip-mining and underground-mining operations be limited to those for which 5-year permits are granted;

(ii) ~~that no~~ a permit *not* be issued until the operator presents a comprehensive plan for reclamation and restoration and a coal conservation plan, together with an adequate performance bond, and the plan is approved;

(iii) ~~that~~ certain other things must be done, ~~that~~ certain remedies *are must be available, that and* certain lands because of their unique or unusual characteristics may not be strip-mined or underground-mined under any circumstances, ~~all as more particularly appears in the remaining provisions of this part;~~ and

(iv) ~~that~~ the department be given authority to administer and enforce a reclamation program that complies with Public Law 95-87, the Surface Mining Control and Reclamation Act of 1977, as amended;

(b) this part be ~~deemed~~ *considered* to be an exercise of the authority granted in the Montana constitution, ~~as adopted June 6, 1972,~~ and, in particular, a response to the mandate expressed in Article IX ~~thereof~~ and also be ~~deemed~~ *considered* to be an exercise of the general police power to provide for the health and welfare of the people.”

**Section 29.** Section 82-4-239, MCA, is amended to read:

**“82-4-239. Reclamation.** (1) The department may have reclamation work done by its employees, by employees of other governmental agencies, by soil conservation districts, or through contracts with qualified persons. The board may construct, operate, and maintain plants for the control and treatment of water pollution resulting from mine drainage.

(2) Any funds or any public works programs available to the department must be used and expended to reclaim and rehabilitate lands that have been subjected to strip mining or underground mining and that have not been reclaimed and rehabilitated in accordance with the standards of this part. The department shall cooperate with federal, state, and private agencies to engage in cooperative projects under this section.

(3) Agents, employees, or contractors of the department may enter upon any land for the purpose of conducting studies or exploratory work to determine whether the land has been strip- or underground-mined and not reclaimed and rehabilitated in accordance with the requirements of this part and to determine the feasibility of restoration, reclamation, abatement, control, or prevention of any adverse effects of past coal-mining practices. Upon request of the director of the department, the attorney general shall bring an injunctive action to restrain any interference with the exercise of the right to enter and inspect granted in



this subsection. *The action must be brought in the county in which the mine is located.*

(4) (a) The department shall take the actions described in subsection (4)(b) when it makes a finding of fact that:

(i) land or water resources have been adversely affected by past coal-mining practices;

(ii) the adverse effects are at a stage at which, in the public interest, action to restore, reclaim, abate, control, or prevent should be taken; and

(iii) the owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices are not known or readily available or the owners will not give permission for the department or its agents, employees, or contractors to enter upon the property to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices.

(b) After giving notice by mail to the owner, if known, and any purchaser under contract for deed, if known, or, if neither is known, by posting notice on the premises and advertising in a newspaper of general circulation in the county in which the land lies, the agents, employees, or contractors of the department may enter on the property adversely affected by past coal-mining practices and on any other property necessary for access to the mineral property to do all things necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices.

(c) Action taken under subsection (4)(b) is not an act of condemnation of property or of trespass, but rather is an exercise of the power granted by ~~sections 1 and 2~~, Article IX, *sections 1 and 2*, of the Montana constitution.

(5) (a) Within 6 months after the completion of projects to restore, reclaim, abate, control, or prevent adverse effects of past coal-mining practices on privately owned land, the department shall itemize the money expended and may file a statement of those expenses in the office of the clerk and recorder of the county in which the land lies, together with a notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement, control, or prevention of adverse effects of past coal-mining practices if the money expended resulted in a significant increase in property value. The statement constitutes a lien upon the land. The lien may not exceed the amount determined by the appraisal to be the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices. A lien under this subsection (5)(a) may not be filed against the property of a person who owned the surface prior to May 2, 1977, and who did not consent to, participate in, or exercise control over the mining operation that necessitated the reclamation performed under this part.

(b) The landowner may petition within 60 days of the filing of the lien to determine the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices. The amount reported to be the increase in value of the premises constitutes the amount of the lien and must be recorded with the statement provided for in this section. Any party aggrieved by the decision may appeal as provided by law.

(c) The lien provided in this section must be recorded at the office of the county clerk and recorder. The statement constitutes a lien upon the land as of

the date of the expenditure of the money and has priority as a lien second only to the lien of real estate taxes imposed upon the land.

(6) The department may acquire the necessary property by gift or purchase. If the property cannot be acquired by gift or purchase at a reasonable cost, proceedings may be instituted in the manner provided in Title 70, chapter 30, against all nonaccepting landholders if:

(a) the property is necessary for successful reclamation;

(b) the acquired land after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices will serve recreation and historic purposes or conservation and reclamation purposes or provide open space benefits; and

(c) (i) permanent facilities, such as treatment plants or relocated stream channels, will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past strip- or underground-coal-mining practices; or

(ii) acquisition of coal refuse disposal sites and all coal refuse on the land will serve the purposes of this part because public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal-mining practices.”

**Section 30.** Section 82-4-252, MCA, is amended to read:

**“82-4-252. Mandamus.** (1) A resident of this state or any person having an interest ~~which~~ *that* is or may be adversely affected, with knowledge that a requirement of this part or a rule adopted under this part is not being enforced or implemented by a public officer or employee whose duty it is to enforce or implement the requirement or rule, may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that ~~shall~~ *must* state the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed in 45-7-202.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce or implement the requirement or rule, the resident or person having an interest ~~which~~ *that* is or may be adversely affected may bring an action of mandamus ~~in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or in the district court of the county in which the land is located.~~ The court, if it finds that a requirement of this part or a rule adopted under this part is not being enforced, shall order the public officer or employee whose duty it is to enforce the requirement or rule to perform ~~his~~ *the officer's or employee's* duties. If ~~he~~ *the officer or employee* fails to ~~do so~~ *obey the order*, the public officer or employee ~~shall~~ *must* be held in contempt of court and is subject to the penalties provided by law.

(3) Any person having an interest that is or may be adversely affected may commence a civil action on ~~his~~ *the person's* own behalf to compel compliance with this part against any person for the violation of this part or any rule, order, or permit issued ~~hereunder~~ *under this part*. However, ~~no such~~ *the* action may not commence:

(a) prior to 60 days after the plaintiff has given notice in writing to the department and to the alleged violator; or

(b) if the department has commenced and is diligently prosecuting a civil action to require compliance with the provisions of this part or any rule, order, or permit issued ~~hereunder~~ *under this part*. Any person may intervene as a matter of right in ~~any such~~ *the* civil action. ~~Nothing in this~~ *This section restricts does not restrict* any right that any person may have under any statute or common law to seek enforcement of this part or the rules adopted ~~hereunder~~ *under this part* or to seek any other relief.

(4) Any person who is injured in ~~his~~ *his* person or property through the violation by any operator of any rule, order, or permit issued pursuant to this part may bring an action for damages, ~~(including reasonable attorney and expert witness fees),~~ only in the county in which the strip- or underground-coal-mining operation complained of is located. ~~Nothing in this~~ *This subsection affects does not affect* the rights established by or limits imposed under ~~chapter 71 of Title 39, chapter 71.~~

(5) The court, in issuing any final order in any action brought pursuant to subsection (3), may award costs of litigation, ~~(including attorney and expert witness fees),~~ to any party whenever the court determines ~~such that the award is~~ appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Montana Rules of Civil Procedure.”

**Section 31.** Section 82-4-301, MCA, is amended to read:

**“82-4-301. Legislative intent and findings.** (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 extraction of mineral by mining is a basic and essential activity making an important contribution to the economy of the state and the nation. At the same time, proper reclamation of mined land and former exploration areas not brought to mining stage is necessary to prevent undesirable land and surface water conditions detrimental to the general welfare, health, safety, ecology, and property rights of the citizens of the state. Mining and exploration for minerals take place in diverse areas where geological, topographical, climatic, biological, and sociological conditions are significantly different, and reclamation specifications must vary accordingly. It is not practical to extract minerals or explore for minerals required by our society without disturbing the surface or subsurface of the earth and without producing waste materials, and the very character of many types of mining operations precludes complete restoration of the land to its original condition. The legislature finds that land reclamation as provided in this part will allow exploration for and mining of valuable minerals while adequately providing for the subsequent beneficial use of the lands to be reclaimed.”*

**Section 32.** Section 82-4-349, MCA, is amended to read:

**“82-4-349. Limitations of actions — venue.** (1) *Legal actions seeking review of a department decision granting or denying an exploration license or operating permit issued under this part must be filed within 90 days after the decision is made. Summons must be issued and process served on all defendants within 60 days after the action is filed.*

(2) *An action to challenge the issuance of a license or permit pursuant to this part must be brought in the county in which the exploration or permitted activity is proposed to occur. If an activity is proposed to occur in more than one county, the action may be brought in any of the counties in which the exploration or activity is proposed to occur.*

(3) *A judicial challenge to an exploration license or operating permit issued pursuant to this part by a party other than the license or permit holder or applicant must include the party to whom the license or permit was issued unless otherwise agreed to by the license or permit holder or applicant. All judicial challenges of licenses or permits for projects with a project cost, as determined under 75-1-203, of more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action."*

**Section 33.** Section 82-4-402, MCA, is amended to read:

**"82-4-402. Policy Intent, findings, and policy.** (1) *The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted The Opencut Mining Act. 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) *Because the extraction and use of opencut materials is important to the economy of this state, it is the policy of this state to provide for the reclamation and conservation of land subjected to opencut materials mining. Therefore, it is the purpose of this part:*

~~(1)~~(a) *to preserve natural resources;*

~~(2)~~(b) *to aid in the protection of wildlife and aquatic resources;*

~~(3)~~(c) *to safeguard and reclaim through effective means and methods all agricultural, recreational, home, and industrial sites subjected to or that may be affected by opencut materials mining;*

~~(4)~~(d) *to protect and perpetuate the taxable value of property through reclamation;*

~~(5)~~(e) *to protect scenic, scientific, historic, or other unique areas; and*

~~(6)~~(f) *to promote the health, safety, and general welfare of the people of this state."*

**Section 34.** Section 82-4-427, MCA, is amended to read:

**"82-4-427. Hearing — appeal — venue** (1) *A person who is aggrieved by a final decision of the department under this part is entitled to a hearing before the board, if a written request is submitted to the board within 30 days of the department's decision.*

(2) *The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this section.*

(3) *An action to challenge the issuance of a permit pursuant to this section must be brought in the county in which the permitted activity is proposed to occur. If an activity is proposed to occur in more than one county, the action may be brought in any of the counties in which the activity is proposed to occur.*

*(4) A judicial challenge to a permit issued pursuant to this part by a party other than the permitholder or applicant must include the party to whom the permit was issued unless otherwise agreed to by the permitholder or applicant. All judicial challenges of permits for projects with a project cost, as determined under 75-1-203, of more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action."*

**Section 35.** Section 82-4-436, MCA, is amended to read:

**"82-4-436. Plan amendments — venue.** (1) Unless an amendment to a plan of operation, reclamation plan, or other permit is proposed by the operator, the department may modify only the terms of a plan or permit in compliance with this section.

(2) If the department believes, based on credible evidence, that continued operation under the terms of an existing plan or permit would violate a substantive numerical or narrative state standard or regulation or otherwise violate a purpose of this part, it may propose to the operator an amendment to the plan or permit.

(3) The department shall notify the operator of the proposed amendment in writing. The notice must include:

- (a) an identification of the existing plan or permit;
- (b) the justification for the amendment, including all test results or other credible evidence that the department relied on in proposing the amendment; and
- (c) the text of the proposed amendment.

(4) The operator may, within 15 days of receipt of the department's amendment notice, request a review of the amendment by the department director. The amendment is not effective or enforceable until 15 days following the issuance of the department's amendment notice or until after the department director affirms or modifies the amendment if a review by the director is requested. A decision by the department director is subject to the contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, parts 6 and 7.

(5) If the operator does not appeal the proposed amendment, the amendment becomes effective and enforceable 15 days after the operator receives the notification.

*(6) An action to challenge the issuance of an amendment pursuant to this section must be brought in the county in which the activity is proposed to occur. If an activity is proposed to occur in more than one county, the action may be brought in any of the counties in which the activity is proposed to occur.*

*(7) A judicial challenge to an amendment issued pursuant to this section by a party other than the amendment holder or applicant must include the party to whom the amendment was issued unless otherwise agreed to by the amendment holder or applicant. All judicial challenges of amendments for projects with a project cost, as determined under 75-1-203, of more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or*

increased cost in litigation, the court may award attorney fees and costs incurred in defending the action.”

**Section 36.** Section 87-5-103, MCA, is amended to read:

**“87-5-103. Legislative intent, findings, and policy.** (1) *The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted The Nongame and Endangered Species Conservation Act. 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 and declares all of the following:

~~(1)~~(a) that it is the policy of this state to manage certain nongame wildlife for human enjoyment, for scientific purposes, and to ~~insure~~ ensure their perpetuation as members of ecosystems;

~~(2)~~(b) that species or subspecies of wildlife indigenous to this state ~~which~~ that may be found to be endangered within the state should be protected in order to maintain and, to the extent possible, enhance their numbers;

~~(3)~~(c) that the state should assist in the protection of species or subspecies of wildlife ~~which that are deemed considered~~ to be endangered elsewhere by prohibiting the taking, possession, transportation, exportation, processing, sale or offer for sale, or shipment within this state of species or subspecies of wildlife unless ~~such~~ those actions will assist in preserving or propagating the species or subspecies.”

**Section 37. Venue.** A proceeding to challenge an action taken pursuant to parts 1 through 3 must be brought in the county in which the activity that is the subject of the action is proposed to occur or will occur. If an activity is proposed to occur or will occur in more than one county, the proceeding may be brought in any of the counties in which the activity is proposed to occur or will occur.

**Section 38. Codification instruction.** (1) [Section 37] is intended to be codified as an integral part of Title 75, chapter 1, part 1, and the provisions of Title 75, chapter 1, part 1, apply to [section 37].

(2) [Section 2] is intended to be codified as an integral part of Title 82 and Title 75, and the provisions of Title 82 and Title 75 apply to [section 2].

**Section 39. 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 40. Effective date.** [This act] is effective on passage and approval.

**Section 41. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to actions for judicial review or other causes of action challenging the issuance of a permit, petition for review, amendment, license, arbitration, action, certificate, or inspection that are pending but not yet decided on or after [the effective date of this act].

Approved April 16, 2003

**CHAPTER NO. 362**

[HB 451]

AN ACT ALLOWING PRIVATE CORRECTIONAL FACILITIES TO CONFINES OUT-OF-STATE INMATES; AMENDING SECTION 53-30-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 53-30-603, MCA, is amended to read:

**“53-30-603. Private correctional facilities — confinable persons.** (1) An individual, corporation, partnership, association, or other private organization or entity may not construct a private correctional facility in this state unless authorized by the department.

(2) An individual, corporation, partnership, association, or other private organization or entity may not operate a private correctional facility in this state unless licensed by the department. A license is nontransferable.

(3) A person ~~charged or convicted in another any state or U.S. federal or charged or convicted in federal court in another state court~~ may not be confined in a private correctional facility in this state *pursuant to approval by the department of a written agreement between the originating jurisdiction and the private correctional facility if the person is at all times and in all places within the correctional facility kept physically separated from persons convicted in this state. The agreement must include provisions for returning an out-of-state inmate to the originating jurisdiction prior to the inmate’s parole or release.”*

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

Approved April 16, 2003

**CHAPTER NO. 363**

[HB 453]

AN ACT PROVIDING FOR THE USE OF A PRISON INMATE’S FUNDS, INCOME, AND ASSETS TO PAY THE INMATE’S MEDICAL AND DENTAL EXPENSES; AND AMENDING SECTION 53-1-107, MCA.

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

**Section 1.** Section 53-1-107, MCA, is amended to read:

**“53-1-107. Limits on inmate financial transactions — taking income earned or accrued outside prison for medical and dental expenses.** (1) An inmate of the Montana a state prison in Deer Lodge or the women’s prison in Billings shall ~~must~~ use the prison inmate trust account system administered by the department of corrections to send money out of or receive money in the facility unless the department grants the inmate an exception. If an inmate accumulates a balance in excess of \$200 in the inmate’s prison inmate trust account, the excess must, consistent with department rules, be forfeited for the payment of restitution, ~~or the inmate’s medical and dental expenses,~~ and the costs of incarceration. The department may charge an inmate a minimum fee, not to exceed \$1.60 each month, to administer the inmate’s account.

(2) (a) Money forfeited under subsection (1) to the payment of restitution must be paid in the following order:

- (i) to the victim until the victim's unreimbursed pecuniary loss is satisfied;
  - (ii) to the crime victims compensation and assistance program in the department of justice for deposit in the state general fund until the state is fully reimbursed for compensation to the victim provided pursuant to Title 53, chapter 9, part 1;
  - (iii) to any other government agency that has compensated the victim for the victim's pecuniary loss; and
  - (iv) to any insurance company that has compensated the victim for the victim's pecuniary loss.
- (b) If the inmate's sentence did not provide for the payment of restitution or if there is a balance of money after restitution has been paid under subsection (2)(a), money forfeited under subsection (1) must be applied *to the payment of the inmate's medical and dental expenses and, if there is a balance after those expenses have been paid, to the inmate's costs of incarceration.*
- (3) The department shall adopt rules establishing criteria for forfeiture of funds under subsection (1). The rules must contain clear guidelines regarding forfeiture that ensure restitution under subsection (2) but that:
- (a) do not unreasonably inhibit an inmate's ability to save money for the purchase of tools or other items to further the education of the inmate for purposes of rehabilitation or seeking employment after release from the correctional facility; and
  - (b) do inhibit any inmate's ability to deal in contraband or illegal acts within or outside the correctional facility.
- (4) *An inmate is responsible for the inmate's medical and dental expenses and is obligated to repay the department for reasonable costs incurred by the department for the inmate's medical and dental expenses. The department may investigate, identify, take in any manner allowed by law for the satisfaction of a judgment, and use to pay the inmate's medical and dental expenses any assets of the inmate or any income of the inmate from sources outside the state prison that is not deposited in the account provided for in subsection (1).*"

Approved April 16, 2003

## CHAPTER NO. 364

[HB 480]

AN ACT INCREASING THE PENALTIES FOR CERTAIN VIOLATIONS REGARDING MOTOR VEHICLE ACCIDENTS; INCREASING THE RATE AT WHICH FINES MAY BE COMMUTED BY JAIL TIME; AND AMENDING SECTION 61-7-118, MCA.

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

**Section 1.** Section 61-7-118, MCA, is amended to read:

**"61-7-118. Penalty for violation.** (1) ~~A person violating any provision of 61-7-104 through 61-7-110 or 61-7-112 through 61-7-114 is guilty of a misdemeanor. Upon a first conviction, the offender shall be punished by a fine of not less than \$10 or more than \$100 or by imprisonment for not more than 10 days. For a second conviction within 1 year thereafter, the offender shall be punished by a fine of not less than \$25 or more than \$200 or by imprisonment for~~



~~not more than 20 days or by both such fine and imprisonment. Upon a third or subsequent conviction within 1 year of the first conviction, an offender shall be punished by a fine of not less than \$50 or more than \$500 or by imprisonment for not more than 6 months or by both such fine and imprisonment.~~

*(1) A person violating any provision of 61-7-104 through 61-7-110 or 61-7-112 through 61-7-114 is guilty of a misdemeanor. Upon a first conviction, the offender shall be punished by a fine of not less than \$200 or more than \$300 or by imprisonment for not more than 20 days. For a second conviction within 1 year of the first conviction, the offender shall be punished by a fine of not less than \$300 or more than \$400, by imprisonment for not more than 30 days, or both. Upon a third or subsequent conviction within 1 year of the first conviction, an offender shall be punished by a fine of not less than \$400 or more than \$500, by imprisonment for not more than 6 months, or both.*

~~(2)~~(2) Subject to the limitations of 46-18-231(3), an offender who fails to pay a fine shall be imprisoned in the county jail in the county in which the offense was committed, and the punishment shall be commuted at the rate of 1 day's incarceration for each ~~\$10~~ \$20 of the fine."

Approved April 17, 2003

## CHAPTER NO. 365

[HB 527]

AN ACT REQUIRING THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND APPLICANTS FOR OPERATING PERMITS UNDER THE METAL MINE RECLAMATION ACT TO CONSIDER THE UTILIZATION OF FACILITIES CONSTRUCTED IN CONJUNCTION WITH MINING OPERATIONS FOR POSTMINING USES IN LIEU OF REQUIRING THE REMOVAL OF THE FACILITIES; PROVIDING THAT ANCILLARY INDUSTRIAL FACILITIES MAY HAVE AN ACCEPTABLE POSTMINING USE; PROVIDING THAT AN AMENDMENT TO AN OPERATING PERMIT FOR THE PURPOSE OF RETENTION OF MINE-RELATED FACILITIES THAT ARE VALUABLE FOR POSTMINING USE IS A MINOR AMENDMENT AND DOES NOT REQUIRE THE PREPARATION OF AN ENVIRONMENTAL REVIEW OR AN ENVIRONMENTAL IMPACT STATEMENT; AMENDING SECTIONS 82-4-303, 82-4-335, 82-4-336, AND 82-4-342, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, metal mine operators typically construct ancillary industrial facilities in conjunction with the operation of metal mines; and

WHEREAS, facilities may include office buildings, shop buildings, electrical transmission lines, electrical power substations, electronic communication lines and facilities, water lines, water treatment plants, septic systems, roads, parking lots, fencing, security stations, and environmental monitoring sites; and

WHEREAS, these facilities may have significant value when the operator discontinues the mining operations; and

WHEREAS, the continued availability of these facilities may provide economic development opportunities for the residents of the county where the facilities are located and to the people of Montana generally; and

WHEREAS, the metal mine reclamation laws do not include provisions that encourage or require the Department of Environmental Quality or the mine operator to consider the feasibility of a postmining use of these facilities for other industrial purposes instead of simply removing the facilities; and

WHEREAS, the Legislature believes that future beneficial use provisions could be provided for in the metal mine reclamation laws without significantly increasing the cost to the state or to the operator of obtaining and maintaining a mine operating permit.

THEREFORE, the Legislature finds that it is beneficial and appropriate to create these provisions.

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

**Section 1.** Section 82-4-303, MCA, is amended to read:

**"82-4-303. Definitions.** As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Abandonment of surface or underground mining" may be presumed when it is shown that continued operation will not resume.

(2) "Amendment" means a change to an approved operating or reclamation plan. A major amendment is an amendment that may significantly affect the human environment. A minor amendment is an amendment that will not significantly affect the human environment.

(3) "Board" means the board of environmental review provided for in 2-15-3502.

(4) "Cyanide ore-processing reagent" means cyanide or a cyanide compound used as a reagent in leaching operations.

(5) "Department" means the department of environmental quality provided for in 2-15-3501.

(6) "Disturbed land" means the area of land or surface water that has been disturbed, beginning at the date of the issuance of the permit. The term includes the area from which the overburden, tailings, waste materials, or minerals have been removed and tailings ponds, waste dumps, roads, conveyor systems, load-out facilities, leach dumps, and all similar excavations or coverings that result from the operation and that have not been previously reclaimed under the reclamation plan.

(7) "Exploration" means:

(a) all activities that are conducted on or beneath the surface of lands and that result in material disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any, other than mining for production and economic exploitation; and

(b) all roads made for the purpose of facilitating exploration, except as noted in 82-4-310.

(8) "Mineral" means any ore, rock, or substance, {other than oil, gas, bentonite, clay, coal, sand, gravel, peat, soil materials, or uranium}, that is taken from below the surface or from the surface of the earth for the purpose of milling, concentration, refinement, smelting, manufacturing, or other subsequent use or processing or for stockpiling for future use, refinement, or smelting.

(9) "Mining" commences when the operator first mines ores or minerals in commercial quantities for sale, beneficiation, refining, or other processing or disposition or first takes bulk samples for metallurgical testing in excess of aggregate of 10,000 short tons.

(10) "Ore processing" means milling, heap leaching, flotation, vat leaching, or other standard hard-rock mineral concentration processes.

(11) "Person" means any person, corporation, firm, association, partnership, or other legal entity engaged in exploration for or mining of minerals on or below the surface of the earth, reprocessing of tailings or waste materials, or operation of a hard-rock mill.

(12) "Placer deposit" means:

(a) naturally occurring, scattered or unconsolidated valuable minerals in gravel, glacial, eolian, colluvial, or alluvial deposits lying above bedrock; or

(b) all forms of deposit except veins of quartz and other rock in place.

(13) "Placer or dredge mining" means the mining of minerals from a placer deposit by a person or persons.

(14) "Reclamation plan" means the operator's written proposal, as required and approved by the department, for reclamation of the land that will be disturbed. The proposal must include, to the extent practical at the time of application for an operating permit:

(a) a statement of the proposed subsequent use of the land after reclamation, *which may include use of the land as an industrial site not necessarily related to mining*;

(b) plans for surface gradient restoration to a surface suitable for the proposed subsequent use of the land after reclamation is completed and the proposed method of accomplishment;

(c) the manner and type of revegetation or other surface treatment of disturbed areas;

(d) procedures proposed to avoid foreseeable situations of public nuisance, endangerment of public safety, damage to human life or property, or unnecessary damage to flora and fauna in or adjacent to the area;

(e) the method of disposal of mining debris;

(f) the method of diverting surface waters around the disturbed areas when necessary to prevent pollution of those waters or unnecessary erosion;

(g) the method of reclamation of stream channels and stream banks to control erosion, siltation, and pollution;

(h) maps and other supporting documents that may be reasonably required by the department; and

(i) a time schedule for reclamation that meets the requirements of 82-4-336.

(15) (a) "Small miner" means a person, firm, or corporation that engages in mining activity that is not exempt from this part pursuant to 82-4-310, that engages in the business of reprocessing of tailings or waste materials, ~~or that~~, except as provided in 82-4-310, ~~that~~ knowingly allows other persons to engage in mining activities on land owned or controlled by the person, firm, or corporation, that does not hold an operating permit under 82-4-335 except for a permit issued under 82-4-335(2) or a permit that meets the criteria of subsection (15)(c), and that conducts:

(i) an operation that results in not more than 5 acres of the earth's surface being disturbed and unreclaimed; or

(ii) two operations that disturb and leave unreclaimed less than 5 acres for each operation if the respective mining properties are:

(A) the only operations engaged in by the person, firm, or corporation; and

(B) at least 1 mile apart at their closest point.

(b) For the purpose of this definition only, the department shall, in computing the area covered by the operation:

(i) exclude access or haulage roads that are required by a local, state, or federal agency having jurisdiction over that road to be constructed to certain specifications if that public agency notifies the department in writing that it desires to have the road remain in use and will maintain it after mining ceases; and

(ii) exclude access roads for which the person, firm, or corporation submits a bond to the department in the amount of the estimated total cost of reclamation along with a description of the location of the road and the specifications to which it will be constructed.

(c) A small miner may hold an operating permit that allows disturbance of 100 acres or less. The permit may be amended to add new disturbance areas, but the total area permitted for disturbance may not exceed 100 acres at any time.

(16) "Soil materials" means earth material found in the upper soil layers that will support plant growth.

(17) (a) "Surface mining" means all or any part of the process involved in mining of minerals by removing the overburden and mining directly from the mineral deposits exposed, including but not limited to open-pit mining of minerals naturally exposed at the surface of the earth, mining by the auger method, and all similar methods by which earth or minerals exposed at the surface are removed in the course of mining.

(b) Surface mining does not include the extraction of oil, gas, bentonite, clay, coal, sand, gravel, peat, soil materials, or uranium or excavation or grading conducted for onsite farming, onsite road construction, or other onsite building construction.

(18) "Underground mining" means all methods of mining other than surface mining.

(19) "Unit of surface-mined area" means that area of land and surface water included within an operating permit actually disturbed by surface mining during each 12-month period of time, beginning at the date of the issuance of the permit. The term includes the area from which overburden or minerals have been removed, the area covered by mining debris, and all additional areas used in surface mining or underground mining operations that by virtue of mining use are susceptible to erosion in excess of the surrounding undisturbed portions of land.

(20) "Vegetative cover" means the type of vegetation, grass, shrubs, trees, or any other form of natural cover considered suitable at time of reclamation."

**Section 2.** Section 82-4-335, MCA, is amended to read:

**"82-4-335. Operating permit — limitation — fees.** (1) A person may not engage in mining, ore processing, or reprocessing of tailings or waste material, construct or operate a hard-rock mill, use cyanide ore-processing reagents or

other metal leaching solvents or reagents, or disturb land in anticipation of those activities in the state without first obtaining an operating permit from the department. A separate operating permit is required for each complex.

(2) A small miner who intends to use a cyanide ore-processing reagent or other metal leaching solvents or reagents shall obtain an operating permit for that part of the small miner's operation where the cyanide ore-processing reagent or other metal leaching solvents or reagents will be used or disposed of.

(3) Prior to receiving an operating permit from the department, a person shall pay the basic permit fee of \$500. The department may require a person who is applying for a permit pursuant to subsection (1) to pay an additional fee not to exceed the actual amount of contractor and employee expenses beyond the normal operating expenses of the department whenever those expenses are reasonably necessary to provide for timely and adequate review of the application, including any environmental review conducted under Title 75, chapter 1, parts 1 and 2. The board may further define these expenses by rule. Whenever the department determines that an additional fee is necessary and the additional fee will exceed \$5,000, the department shall notify the applicant that a fee must be paid and submit to the applicant an itemized estimate of the proposed expenses. The department shall provide the applicant an opportunity to review the department's estimated expenses. The applicant may indicate which proposed expenses the applicant considers duplicative or excessive, if any.

(4) The person shall submit an application on a form provided by the department, which must contain the following information and any other pertinent data required by rule:

(a) the name and address of the operator and, if a corporation or other business entity, the name and address of its officers, directors, owners of 10% or more of any class of voting stock, partners, and the like and its resident agent for service of process, if required by law;

(b) the minerals expected to be mined;

(c) a proposed reclamation plan;

(d) the expected starting date of operations;

(e) a map showing the specific area to be mined and the boundaries of the land that will be disturbed, the topographic detail, the location and names of all streams, roads, railroads, and utility lines on or immediately adjacent to the area, and the location of proposed access roads to be built;

(f) the names and addresses of the owners of record and any purchasers under contracts for deed of the surface of the land within the permit area and the owners of record and any purchasers under contracts for deed of all surface area within one-half mile of any part of the permit area, provided that the department is not required to verify this information;

(g) the names and addresses of the present owners of record and any purchasers under contracts for deed of all minerals in the land within the permit area, provided that the department is not required to verify this information;

(h) the source of the applicant's legal right to mine the mineral on the land affected by the permit, provided that the department is not required to verify this information;

(i) the types of access roads to be built and manner of reclamation of road sites on abandonment;

(j) a plan that will provide, within limits of normal operating procedures of the industry, for completion of the operation;

(k) ground water and surface water hydrologic data gathered from a sufficient number of sources and length of time to characterize the hydrologic regime;

(l) a plan detailing the design, operation, and monitoring of impounding structures, including but not limited to tailings impoundments and water reservoirs, sufficient to ensure that the structures are safe and stable;

(m) a plan identifying methods to be used to monitor for the accidental discharge of objectionable materials and remedial action plans to be used to control and mitigate discharges to surface or ground water; ~~and~~

(n) an evaluation of the expected life of any tailings impoundment or waste area and the potential for expansion of the tailings impoundment or waste site; *and*

*(o) an assessment of the potential for the postmining use of mine-related facilities for other industrial purposes, including evidence of consultation with the county commission of the county or counties where the mine or mine-related facilities will be located.*

(5) Except as provided in subsection (7), the permit provided for in subsection (1) for a large-scale mineral development as defined in 90-6-302 must be conditioned to provide that activities under the permit may not commence until the impact plan is approved under 90-6-307 and until the permittee has provided a written guarantee to the department and to the hard-rock mining impact board of compliance within the time schedule with the commitment made in the approved impact plan, as provided in 90-6-307. If the permittee does not comply with that commitment within the time scheduled, the department, upon receipt of written notice from the hard-rock mining impact board, shall suspend the permit until it receives written notice from the hard-rock mining impact board that the permittee is in compliance.

(6) When the department determines that a permittee has become or will become a large-scale mineral developer pursuant to 82-4-339 and 90-6-302 and provides notice as required under 82-4-339, within 6 months of receiving the notice, the permittee shall provide the department with proof that the permittee has obtained a waiver of the impact plan requirement from the hard-rock mining impact board or that the permittee has filed an impact plan with the hard-rock mining impact board and the appropriate county or counties. If the permittee does not file the required proof or if the hard-rock mining impact board certifies to the department that the permittee has failed to comply with the hard-rock mining impact review and implementation requirements in Title 90, chapter 6, parts 3 and 4, the department shall suspend the permit until the permittee files the required proof or until the hard-rock mining impact board certifies that the permittee has complied with the hard-rock mining impact review and implementation requirements.

(7) Compliance with 90-6-307 is not required for exploration and bulk sampling for metallurgical testing when the aggregate samples are less than 10,000 tons.

(8) A person may not be issued an operating permit if:

(a) that person's failure, or the failure of any firm or business association of which that person was a principal or controlling member, to comply with the provisions of this part, the rules adopted under this part, or a permit or license

issued under this part has resulted in either the receipt of bond proceeds by the department or the completion of reclamation by the person's surety or by the department, unless that person meets the conditions described in 82-4-360;

(b) that person has not paid a penalty for which the department has obtained a judgment pursuant to 82-4-361;

(c) that person has failed to post a reclamation bond required by 82-4-305; or

(d) that person has failed to comply with an abatement order issued pursuant to 82-4-362, unless the department has completed the abatement and the person has reimbursed the department for the cost of abatement.

(9) A person may not be issued a permit under this part unless, at the time of submission of a bond, the person provides the current information required in subsection (4)(a) and:

(a) (i) certifies that the person is not currently in violation in this state of any law, rule, or regulation of this state or of the United States pertaining to air quality, water quality, or mined land reclamation; or

(ii) presents a certification by the administering agency that the violation is in the process of being corrected to the agency's satisfaction or is the subject of a bona fide administrative or judicial appeal; and

(b) if the person is a partnership, corporation, or other business association, provides the certification required by subsection (9)(a)(i) or (9)(a)(ii), as applicable, for any partners, officers, directors, owners of 10% or more of any class of voting stock, and business association members."

**Section 3.** Section 82-4-336, MCA, is amended to read:

**"82-4-336. Reclamation plan and specific reclamation requirements.** (1) Taking into account the site-specific conditions and circumstances, *including the postmining use of the mine site*, disturbed lands must be reclaimed consistent with the requirements and standards set forth in this section.

(2) The reclamation plan must provide that reclamation activities, particularly those relating to control of erosion, to the extent feasible, must be conducted simultaneously with the operation and in any case must be initiated promptly after completion or abandonment of the operation on those portions of the complex that will not be subject to further disturbance.

(3) In the absence of an order by the department providing a longer period, the plan must provide that reclamation activities must be completed not more than 2 years after completion or abandonment of the operation on that portion of the complex.

(4) In the absence of emergency or suddenly threatened or existing catastrophe, an operator may not depart from an approved plan without previously obtaining from the department written approval for the proposed change.

(5) Provision must be made to avoid accumulation of stagnant water in the development area to the extent that it serves as a host or breeding ground for mosquitoes or other disease-bearing or noxious insect life.

(6) All final grading must be made with nonnoxious, nonflammable, noncombustible solids unless approval has been granted by the department for a supervised sanitary fill.

(7) When mining has left an open pit exceeding 2 acres of surface area and the composition of the floor or walls of the pit are likely to cause formation of acid, toxic, or otherwise pollutive solutions ("objectionable effluents") on exposure to moisture, the reclamation plan must include provisions that adequately provide for:

(a) insulation of all faces from moisture or water contact by covering the faces with material or fill not susceptible itself to generation of objectionable effluents in order to mitigate the generation of objectionable effluents; or

(b) processing of any objectionable effluents in the pit before they are allowed to flow or be pumped out of the pit to reduce toxic or other objectionable ratios to a level considered safe to humans and the environment by the department; or

(c) drainage of any objectionable effluents to settling or treatment basins when the objectionable effluents must be reduced to levels considered safe by the department before release from the settling basin; or

(d) absorption or evaporation of objectionable effluents in the open pit itself; and

(e) prevention of entrance into the open pit by persons or livestock lawfully upon adjacent lands by fencing, warning signs, and other devices that may reasonably be required by the department.

(8) Provisions for vegetative cover must be required in the reclamation plan if appropriate to the future use of the land as specified in the reclamation plan. The reestablished vegetative cover must meet county standards for noxious weed control.

(9) (a) With regard to disturbed land other than open pits and rock faces, the reclamation plan must provide for the reclamation of all disturbed land to comparable utility and stability as that of adjacent areas. *This standard may not be applied to require the removal of mine-related facilities that are valuable for postmining use. If the reclamation plan provides that mine-related facilities will not be removed or that the disturbed land associated with the facilities will not be reclaimed by the permittee, the following apply:*

(i) *The postmining use of the mine-related facilities must be approved by the department.*

(ii) *In the absence of a legitimate postmining use of mine-related facilities upon completion of other approved mine reclamation activities, the permittee shall comply with the reclamation requirements of this part and the reclamation plan within the time limits established in subsection (3) for mine-related facilities that had previously been identified as valuable for postmining use.*

(b) With regard to open pits and rock faces, the reclamation plan must provide for reclamation to a condition:

(i) of stability structurally competent to withstand geologic and climatic conditions without significant failure that would be a threat to public safety and the environment;

(ii) that affords some utility to humans or the environment; and

(iii) that mitigates postreclamation visual contrasts between reclamation lands and adjacent lands.



(c) The reclamation of open pits and rock faces does not require backfilling, in whole or in part, except and only to the extent necessary to meet the requirements of the applicable provisions of Title 75, chapters 2 and 5.

(10) The reclamation plan must provide sufficient measures to ensure public safety and to prevent the pollution of air or water and the degradation of adjacent lands.

(11) A reclamation plan must be approved by the department if it adequately provides for the accomplishment of the requirements and standards set forth in this section.

(12) The reclamation plan must provide for permanent landscaping and contouring to minimize the amount of precipitation that infiltrates into disturbed areas, including but not limited to tailings impoundments and waste rock dumps. The plan must also provide measures to prevent objectionable postmining ground water discharges.”

**Section 4.** Section 82-4-342, MCA, is amended to read:

**“82-4-342. Amendment to operating permits.** (1) During the term of an operating permit issued under this part, an operator may apply for an amendment to the permit. The operator may not apply for an amendment to delete disturbed acreage except following reclamation, as required under 82-4-336, and bond release for the disturbance, as required under 82-4-338.

(2) (a) The board may by rule establish criteria for the classification of amendments as major or minor. The board shall adopt rules establishing requirements for the content of applications for major and minor amendments and the procedures for processing minor amendments.

(b) *An amendment must be considered minor if:*

(i) *it is for the purpose of retention of mine-related facilities that are valuable for postmining use;*

(ii) *evidence is submitted showing that a local government has requested retention of the mine-related facilities for a postmining use; and*

(iii) *the postmining use of the mine-related facilities meets the requirements provided for in 82-4-336.*

(3) Applications for major amendments must be processed pursuant to 82-4-337.

(4) The department shall review an application for a minor amendment and provide a notice of decision on the adequacy of the application within 30 days. If the department does not respond within 30 days, then the permit is revised in accordance with the application.

(5) The department is not required to prepare an environmental assessment or an environmental impact statement for the following categories of action:

(a) actions that qualify for a categorical exclusion as defined by rule or justified by a programmatic review pursuant to Title 75, chapter 1;

(b) administrative actions, such as routine, clerical, or similar functions of a department, including but not limited to administrative procurement, contracts for consulting services, and personnel actions;

(c) repair or maintenance of the permittee’s equipment or facilities;

(d) investigation and enforcement actions, such as data collection, inspection of facilities, or enforcement of environmental standards;

(e) ministerial actions, such as actions in which the agency does not exercise discretion, but acts upon a given state of facts in a prescribed manner;

(f) approval of actions that are primarily social or economic in nature and that do not otherwise affect the human environment;

(g) changes in a permit boundary that increase disturbed acres that are insignificant in impact relative to the entire operation, provided that the increase is less than 10 acres or 5% of the permitted area, whichever is less; ~~and~~

(h) changes in an approved operating plan or reclamation plan for an activity that was previously permitted, provided that the impacts of the change will be insignificant relative to the impacts of the entire operation and there is less than 10 acres of additional disturbance; *and*

(i) *changes in a permit for the purpose of retention of mine-related facilities that are valuable for postmining use.*"

**Section 5. Effective date.** [This act] is effective on passage and approval.

Approved April 16, 2003

## CHAPTER NO. 366

[HB 553]

AN ACT REVISING THE LAWS GOVERNING THE TREATMENT OF ANIMALS; PROVIDING FOR A CIVIL HEARING CONCERNING THE CARE OF ANIMALS SEIZED WHEN THE OWNER IS CHARGED WITH CRUELTY TO ANIMALS; CHANGING THE FINE AND IMPRISONMENT PENALTIES FOR THE CRIME; CREATING THE OFFENSE OF "AGGRAVATED ANIMAL CRUELTY"; EXPANDING THE LIST OF EXEMPT ACTIVITIES AND PRACTICES; AND AMENDING SECTION 45-8-211, MCA.

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

**Section 1.** Section 45-8-211, MCA, is amended to read:

**"45-8-211. Cruelty to animals — ~~exception exceptions.~~** (1) A person commits the offense of cruelty to animals if, without justification, the person knowingly or negligently subjects an animal to mistreatment or neglect by:

(a) overworking, beating, tormenting, *torturing*, injuring, or killing ~~any~~ *the* animal;

(b) carrying or confining ~~any~~ *the* animal in a cruel manner;

(c) failing to provide an animal in the person's custody with:

~~(i) proper food, drink, or shelter; or~~

(i) *food and water of sufficient quantity and quality to sustain the animal's normal health;*

(ii) *minimum protection for the animal from adverse weather conditions, with consideration given to the species;*

~~(iii)~~ (iii) *in cases of immediate, obvious, serious illness or injury, licensed veterinary or other appropriate medical care;*

(d) abandoning any helpless animal or abandoning any animal on any highway, railroad, or in any other place where it may suffer injury, hunger, or exposure or become a public charge; or

(e) promoting, sponsoring, conducting, or participating in an animal race of more than 2 miles, except a sanctioned endurance race.

(2) (a) A person convicted of the offense of cruelty to animals shall be fined *an amount not to exceed \$500 \$1,000* or be imprisoned in the county jail for a term not to exceed ~~6 months~~ 1 year, or both. A person convicted of a second or subsequent offense of cruelty to animals *or of a first or subsequent offense of aggravated animal cruelty* shall be fined *an amount not to exceed \$1,000 \$2,500* or be ~~imprisoned sentenced to the department of corrections in the state prison~~ for a term not to exceed 2 years, or both.

(b) If the convicted person is the owner, the person may be required to forfeit *any animal affected* to the county in which the person is convicted ~~any animal affected~~. This provision does not affect the interest of any secured party or other person who has not participated in the offense.

(c) *For the purposes of this subsection (2), when more than one animal is subject to cruelty to animals, each act may comprise a separate offense.*

(3) In addition to the sentence provided in subsection (2), the court ~~may~~ shall:

(a) require the defendant to pay all reasonable costs incurred in providing necessary veterinary attention and treatment for any animal affected, *including reasonable costs of care incurred by a public or private animal control agency or humane animal treatment shelter*; and

(b) prohibit or limit the defendant's ownership, possession, or custody of animals, as the court believes appropriate during the term of the sentence.

(4) ~~Nothing in this section prohibits~~ *This section does not prohibit:*

(a) a person ~~from~~ humanely destroying an animal for just cause; ~~or~~

(b) the use of commonly accepted agricultural and livestock practices on livestock;

(c) *rodeo activities that meet humane standards of the professional rodeo cowboys association;*

(d) *lawful fishing, hunting, and trapping activities;*

(e) *lawful wildlife management practices;*

(f) *lawful scientific or agricultural research or teaching that involves the use of animals;*

(g) *services performed by a licensed veterinarian;*

(h) *lawful control of rodents and predators and other lawful animal damage control activities; or*

(i) *accepted training and discipline methods."*

**Section 2. Aggravated animal cruelty.** A person commits the offense of aggravated animal cruelty if the person purposely or knowingly:

(1) kills or inflicts cruelty to an animal with the purpose of terrifying, torturing, or mutilating the animal; or

(2) inflicts cruelty to animals on a collection, kennel, or herd of 10 or more animals.

**Section 3. Animal welfare hearing.** (1) When an animal is seized from a person pursuant to an arrest for an alleged violation of 45-8-211 or [section 2],

the prosecutor may file petition for an animal welfare hearing in district court in the county where the arrest was made.

(2) The petition must contain:

(a) the purported facts regarding animal neglect and the current condition of the animal;

(b) any facts demonstrating the animal's extreme disease, injury, or suffering, if applicable; and

(c) the name and address of the respondent.

(3) If the court finds probable cause that the animal exhibits extreme disease, injury, or suffering, the court shall set the matter for hearing not more than 10 days after the petition was filed with the clerk of court. Otherwise, the court shall set the matter for hearing not more than 30 days after the petition was filed.

(4) At the hearing, the court may consider the following factors:

(a) the propriety of returning the animal to the owner given the alleged facts regarding abuse or neglect;

(b) the extent of the animal's disease, injury, or suffering, if applicable;

(c) the likelihood of viable treatment of the animal's condition, if applicable, based upon available veterinary testimony; and

(d) the availability of funding to provide for the animal's treatment, shelter, and care.

(5) Upon consideration of the factors listed in subsection (4), the court may order any of the following:

(a) immediate release of the animal to the owner;

(b) imposition of a bond or security in an amount sufficient to provide for the animal's care for a minimum of 30 days from the date of seizure;

(c) euthanization of severely diseased, injured, or suffering animals; or

(d) retention of the animal in a humane animal treatment shelter.

(6) A hearing pursuant to this section does not constitute an adjudication with regard to charges filed under 45-8-211 or [section 2].

**Section 4. Codification instruction.** (1) [Section 2] is intended to be codified as an integral part of Title 45, chapter 8, part 2, and the provisions of Title 45, chapter 8, part 2, apply to [section 2].

(2) [Section 3] is intended to be codified as an integral part of Title 27, chapter 1, part 4, and the provisions of Title 27, chapter 1, part 4, apply to [section 3].

Approved April 17, 2003

## CHAPTER NO. 367

[HB 563]

AN ACT GENERALLY REVISING ELECTION LAWS; PROHIBITING A THIRD PARTY FROM COLLECTING ABSENTEE BALLOT APPLICATIONS TO FORWARD TO AN ELECTION ADMINISTRATOR, WITH CERTAIN EXCEPTIONS; ALLOWING POLITICAL PARTY COMMITTEEMEN FOR AN

ELECTION PRECINCT TO BE ELECTED BY ACCLAMATION; ALLOWING COMMISSIONERS OF A DRAINAGE DISTRICT TO BE ELECTED BY ACCLAMATION; AND AMENDING SECTIONS 13-13-213, 13-38-201, 85-8-302, AND 85-8-624, MCA.

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

**Section 1.** Section 13-13-213, MCA, is amended to read:

**“13-13-213. Transmission of application to election administrator — delivery of ballot.** (1) Except as provided in subsection ~~(2)~~ (3), the elector shall ~~forward the application by mail~~ *the application directly to the election administrator or deliver* ~~it~~ *the application* in person to the election administrator. *With the exception of an immediate family member, as defined in 15-30-602, or a guardian, a third party may not collect applications for absentee ballots from electors and forward the applications to the election administrator.*

(2) The election administrator shall compare the signature on the application with the applicant's signature on the registration card. If convinced the individual making the application is the same as the one whose name appears on the registration card, the election administrator shall deliver the ballot to the elector in person or as otherwise provided in 13-13-214.

~~(2)~~(3) In lieu of the requirement provided in subsection (1), an elector who requests an absentee ballot pursuant to 13-13-212(3) may return the application to the special absentee election board. Upon receipt of the application, the special absentee election board shall examine the signatures on the application and a copy of the voting registration card to be provided by the election administrator. If the special absentee election board believes that the applicant is the same person as the one whose name appears on the registration card, the special absentee election board shall provide a ballot to the elector.”

**Section 2.** Section 13-38-201, MCA, is amended to read:

**“13-38-201. Election of committeemen at primary.** (1) ~~Each~~ *Except as provided in subsection (4), each* political party shall elect at each primary election one ~~man and one woman~~ *person of each sex* who shall serve as committeemen for each election precinct. The committeemen ~~shall~~ *must* be residents and registered voters of the precinct.

(2) An elector may be placed in nomination for committeeman by a ~~writing so stating~~ *written statement*, signed by the elector, notarized, and filed in the office of the registrar within the time for filing declarations naming candidates for nomination at the regular biennial primary election.

(3) ~~The~~ *Except as provided in subsection (4), the* names of candidates for precinct committeeman of each political party ~~shall~~ *must* be printed on the party ticket in the same manner as other candidates and the voter shall vote for them in the same manner ~~as he~~ *that the voter* does for other candidates.

(4) *If only one person of each sex has been nominated to fill a precinct's positions, the election administrator may decline to include that precinct's election in the primary election. If a precinct's election is not held during the primary election pursuant to this subsection, the county governing body shall declare elected by acclamation the candidates nominated for that precinct's committeemen positions.”*

**Section 3.** Section 85-8-302, MCA, is amended to read:

**“85-8-302. Election of commissioners — regular term of office.** (1) ~~The~~ Except as provided in subsection (2), the regular election of commissioners ~~shall~~ must be held annually in accordance with 13-1-104 and 13-1-401.

(2) *If the number of candidates is equal to or less than the number of positions to be elected, the election administrator may cancel the election in accordance with 13-1-304. If an election is canceled as provided in this subsection, the county governing body shall declare elected by acclamation the candidate who filed a nominating petition for the position. If there is not a candidate nominated for the position, the board of commissioners shall make an appointment to fill the position and the term is the same as if the commissioner were elected.*

(3) The term of office of commissioners ~~shall commence~~ commences on the first Tuesday in May following their election *or appointment*.

(4) ~~At~~ Except as provided in subsection (2), at the first regular election following the organization of a district and in districts organized and in existence on March 1, 1921, and ~~which that~~, on petition, have been divided into divisions, at the first regular election following the date of the order making ~~such~~ the division, there ~~shall~~ must be elected three commissioners, one commissioner being elected from each division of which ~~he~~ the commissioner must be an actual landowner. One of the commissioners, to be determined by lot, shall hold office until the first Tuesday in May in the year following ~~his~~ the commissioner's election; another of the commissioners, to be determined by lot, shall hold office until the first Tuesday in May in the second year following ~~his~~ the commissioner's election; and the third of the commissioners shall hold office until the first Tuesday in May in the third year following ~~his~~ the commissioner's election. Thereafter, one commissioner ~~shall~~ must be elected each year, who shall hold office for a term of 3 years and until ~~his~~ the commissioner's successor is elected *or appointed* and qualified. The person elected *or appointed* as a commissioner in each year to succeed the commissioner whose term is then expiring must be elected *or appointed* as a commissioner from the same division as the commissioner whom ~~he~~ the commissioner is to succeed.

~~(2)~~(5) Each commissioner must be a resident of a county where a portion of the district lands is situated.”

**Section 4.** Section 85-8-624, MCA, is amended to read:

**“85-8-624. Assessments on improvements — taxpayers' approval, limitations, and election procedures.** (1) ~~It shall require~~ a vote of the persons on the assessment rolls in any existing district *is required* to make Chapter 409, Laws of 1973, applicable to ~~such districts~~ a district.

(2) ~~Nothing in~~ Chapter 409, Laws of 1973, ~~confers~~ does not confer upon districts created for drainage purposes only the authority to levy assessments on benefits to improvements.

(3) The election provided for by subsection (1) ~~shall~~ must be governed by the following rules:

(a) Notice of the election ~~shall~~ must be as provided in 13-1-401(4).

(b) The manner of conducting the election ~~shall~~ must be as provided in ~~85-8-302~~ 13-1-401 and as nearly as practicable in accordance with the provisions of the general election laws of the state *in Title 13*, except that ~~no~~ registration may *not* be required.

(c) The qualifications of electors ~~shall~~ must be as provided in 85-8-305, except that, in addition to persons holding title or evidence of title to lands

within the district, any person, as ~~therein defined~~ *provided in 85-8-305*, who does not own land within the district but has been assessed or will have ~~his~~ *the person's* improvements assessed under Chapter 409, Laws of 1973, or who will be assessed for benefits received ~~shall be~~ *is* entitled to one vote. Commissioners shall prepare a list of ~~such~~ persons, and the election administrator or deputy election administrator shall give them notice as provided in 13-1-401(4).

(d) The commissioners of any district in existence prior to March 21, 1973, who wish to hold an election to determine if the district ~~shall be~~ *is* governed by Chapter 409, Laws of 1973, shall at any regular or special meeting adopt a resolution calling for an election to determine whether or not the voters of ~~said~~ *the* district wish to be governed by Chapter 409, Laws of 1973. The resolution ~~shall~~ *must* contain a short summary of the changes made by Chapter 409, Laws of 1973, and the summary must be included in the notice provided for by 13-1-401(4). In addition, the commission shall provide copies of Chapter 409, Laws of 1973, to any person interested in obtaining a copy ~~of the same~~, and the notice to the persons in the district calling the elections ~~shall~~ *must* describe where and how copies may be obtained. The commissioners may authorize a reasonable charge for providing ~~said~~ copies, not to exceed 20 cents ~~per~~ a page.

(e) The ballot ~~shall~~ *must* include the summary as provided for in ~~the preceding~~ subsection (3)(d), and the form of the ballot ~~shall~~ *must* conform as closely as possible to that provided for in Title 13, chapter 27.

(f) A simple majority of those who cast valid ballots ~~shall determine~~ *determines* the outcome of the election."

**Section 5. Coordination instruction.** (1) If House Bill No. 532 and [this act] are both passed and approved, then [section 3 of this act] amending 85-8-302, is void.

(2) If House Bill No. 190 and [this act] are both passed and approved, then [section 29] of House Bill No. 190, amending 13-13-213, is void.

Approved April 17, 2003

## CHAPTER NO. 368

[HB 584]

AN ACT REVISING THE CONTROLLED ALLOCATION OF LIABILITY LAWS; ELIMINATING THE TERMINATION DATE FOR THE CONTROLLED ALLOCATION OF LIABILITY ACT; AMENDING SECTION 75-10-743, MCA; REPEALING SECTION 75-10-752, MCA, AND SECTION 30, CHAPTER 415, LAWS OF 1997; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 75-10-743, MCA, is amended to read:

**"75-10-743. (Temporary) Orphan share state special revenue account — reimbursement of claims — payment of department costs.** (1) There is an orphan share account in the state special revenue fund established in 17-2-102 that is to be administered by the department. Money in the account is available to the department by appropriation and must be used to reimburse remedial action costs claimed pursuant to 75-10-742 through 75-10-752 and to pay costs incurred by the department in defending the orphan share.

(2) There must be deposited in the orphan share account:

- (a) all penalties assessed pursuant to 75-10-750(12);
- (b) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202;
- (c) funds allocated from the resource indemnity and ground water assessment tax proceeds provided for in 15-38-106;
- (d) unencumbered funds remaining in the abandoned mines state special revenue account;
- (e) interest income on the account;
- (f) funds received from settlements pursuant to 75-10-719(7); and
- (g) funds received from reimbursement of the department's orphan share defense costs pursuant to subsection (6).

(3) If the orphan share fund contains sufficient money, valid claims must be reimbursed subsequently in the order in which they were received by the department. If the orphan share fund does not contain sufficient money to reimburse claims for completed remedial actions, a reimbursement may not be made and the orphan share fund, the department, and the state are not liable for making any reimbursement for the costs. The department and the state are not liable for any penalties if the orphan share fund does not contain sufficient money to reimburse claims, and interest may not accrue on outstanding claims.

(4) Except as provided in subsection (8), claims may not be submitted and remedial action costs may not be reimbursed from the orphan share fund until all remedial actions, except for operation and maintenance, are completed at a facility.

(5) Reimbursement from the orphan share fund must be limited to actual documented remedial action costs incurred after the date of petition provided in 75-10-745. Reimbursement may not be made for attorney fees, legal costs, or operation and maintenance costs.

(6) (a) The department's costs incurred in defending the orphan share must be paid by the persons participating in the allocation under 75-10-742 through 75-10-752 in proportion to their allocated shares. The orphan share fund is responsible for a portion of the department's costs incurred in defending the orphan share in proportion to the orphan share's allocated share, as follows:

(i) If sufficient funds are available in the orphan share fund, the orphan share fund must pay the department's costs incurred in defending the orphan share in proportion to the share of liability allocated to the orphan share.

(ii) If sufficient funds are not available in the orphan share fund, persons participating in the allocation under 75-10-742 through 75-10-752 shall pay all the orphan share's allocated share of the department's costs incurred in defending the orphan share in proportion to each person's allocated share of liability.

(b) A person who pays the orphan share's proportional share of costs has a claim against the orphan share fund and must be reimbursed as provided in subsection (3).

(7) ~~(a)~~ On August 21, 2002, \$1,000 is transferred from the orphan share fund to the general fund. If sufficient money remains in the orphan share fund on June 29, 2003, \$999,000 must be transferred to the general fund.



~~(b) If any money remains in the orphan share fund after June 30, 2005, and after outstanding claims are paid, the money must be deposited in the general fund.~~

(8) If the lead liable person under 75-10-746 presents evidence to the department that the person cannot complete the remedial actions without partial reimbursement and that a delay in reimbursement will cause undue financial hardship on the person, the department may allow the submission of claims and may reimburse the claims prior to the completion of all remedial actions. A person is not eligible for early reimbursement unless the person is in substantial compliance with all department-approved remedial action plans.

(9) A person participating in the allocation process who received funds under the mixed funding pilot program provided for in sections 14 through 20, Chapter 584, Laws of 1995, may not claim or receive reimbursement from the orphan share fund for the amount of funds received under the mixed funding pilot program that are later attributed to the orphan share under the allocation process. (Terminates June 30, 2005—sec. 30, Ch. 415, L. 1997.)”

**Section 2. Repealer.** Section 75-10-752, MCA, and section 30, Chapter 415, Laws of 1997, are repealed.

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

Approved April 17, 2003

## CHAPTER NO. 369

[SB 152]

AN ACT REVISING THE QUALIFICATIONS, PROCEDURES, AND FEES FOR OBTAINING SPECIAL PERMITS TO SELL BEER AND TABLE WINE; DEFINING “SPECIAL EVENT”; REVISING CATERING REQUIREMENTS; AMENDING SECTIONS 16-1-106, 16-4-111, 16-4-204, 16-4-301, AND 16-4-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 16-1-106, MCA, is amended to read:

**“16-1-106. Definitions.** As used in this code, the following definitions apply:

(1) “Agency franchise agreement” means an agreement between the department and a person appointed to sell liquor and table wine as a commission merchant rather than as an employee.

(2) “Agency liquor store” means a store operated under an agency franchise agreement in accordance with this code for the purpose of selling liquor at either the posted or retail price for off-premises consumption.

(3) “Alcohol” means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

(4) “Alcoholic beverage” means a compound produced and sold for human consumption as a drink that contains more than 0.5% of alcohol by volume.

(5) “Beer” means a malt beverage containing not more than 7% of alcohol by weight.

(6) "Beer importer" means a person other than a brewer who imports malt beverages.

(7) "Brewer" means a person who produces malt beverages.

(8) "Community" means:

(a) in an incorporated city or town, the area within the incorporated city or town boundaries;

(b) in an unincorporated city or area, the area identified by the federal bureau of the census as a community for census purposes; and

(c) in a consolidated local government, the area of the consolidated local government not otherwise incorporated.

(9) "Department" means the department of revenue, unless otherwise specified.

(10) "Hard cider" means an alcoholic beverage that is made from the alcoholic fermentation of the juices of apples or pears and that contains not less than 0.5% alcohol by volume and not more than 6.9% alcohol by volume, including but not limited to flavored, sparkling, or carbonated cider.

(11) "Immediate family" means a spouse, dependent children, or dependent parents.

(12) "Import" means to transfer beer or table wine from outside the state of Montana into the state of Montana.

(13) "Liquor" means an alcoholic beverage except beer and table wine.

(14) "Malt beverage" means an alcoholic beverage made by the fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts or their products and with or without other malted cereals and with or without the addition of unmalted or prepared cereals, other carbohydrates, or products prepared from carbohydrates and with or without other wholesome products suitable for human food consumption.

(15) "Package" means a container or receptacle used for holding an alcoholic beverage.

(16) "Posted price" means the wholesale price of liquor for sale to persons who hold liquor licenses as fixed and determined by the department and in addition an excise and license tax as provided in this code.

(17) "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that contains 50% of alcohol by volume.

(18) "Public place" means a place, building, or conveyance to which the public has or may be permitted to have access and any place of public resort.

(19) "Retail price" means the price established by an agent for the sale of liquor to persons who do not hold liquor licenses. The retail price may not be less than the department's posted price.

(20) "Rules" means rules adopted by the department or the department of justice pursuant to this code.

(21) "*Special event*", as it relates to an application for a beer and wine special permit, means a short, infrequent, out-of-the-ordinary occurrence, such as a picnic, fair, reception, or sporting contest.

~~(21)~~ (22) "State liquor warehouse" means a building owned or under control of the department for the purpose of receiving, storing, transporting, or selling alcoholic beverages to agency liquor stores.

~~(22)~~ (23) "Storage depot" means a building or structure owned or operated by a brewer at any point in the state of Montana off and away from the premises of a brewery, which building or structure is equipped with refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute beer as permitted by this code.

~~(23)~~ (24) "Subwarehouse" means a building or structure owned or operated by a licensed beer wholesaler or table wine distributor, located at a site in Montana other than the site of the beer wholesaler's or table wine distributor's warehouse or principal place of business, and used for the receiving, storage, and distribution of beer or table wine as permitted by this code.

~~(24)~~ (25) "Table wine" means wine that contains not more than 16% alcohol by volume and includes cider.

~~(25)~~ (26) "Table wine distributor" means a person importing into or purchasing in Montana table wine for sale or resale to retailers licensed in Montana.

~~(26)~~ (27) "Warehouse" means a building or structure located in Montana that is owned or operated by a licensed beer wholesaler or table wine distributor for the receiving, storage, and distribution of beer or table wine as permitted by this code.

~~(27)~~ (28) "Wine" means an alcoholic beverage made from or containing the normal alcoholic fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except as may occur in the usual cellar treatment of clarifying and aging, and that contains more than 0.5% but not more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic beverages not defined in this subsection but made in the manner of wine and labeled and sold as wine in accordance with federal regulations are also wine."

**Section 2.** Section 16-4-111, MCA, is amended to read:

**"16-4-111. Catering endorsement for beer and wine licensees.** (1) (a) A person who is engaged primarily in the business of providing meals with table service and who is licensed to sell beer at retail or beer and wine at retail for on-premises consumption may, upon the approval of the department, be granted a catering endorsement to the license to allow the catering and sale of beer or beer and wine to persons attending a special event upon premises not otherwise licensed for the sale of beer or beer and wine for on-premises consumption. The beer or wine must be consumed on the premises where the event is held.

(b) A person who is licensed pursuant to 16-4-420 to sell beer at retail or beer and wine at retail for on-premises consumption may, upon the approval of the department, be granted a catering endorsement to the license to allow the catering and sale of beer and wine to persons attending a special event upon premises not otherwise licensed for the sale of beer or beer and wine, along with food equal in cost to 65% of the total gross revenue from the catering contract, for on-premises consumption. The beer or wine must be consumed on the premises where the event is held.

(2) A written application for a catering endorsement and an annual fee of \$200 must be submitted to the department for its approval.

(3) A licensee who holds a catering endorsement may not cater an event in which the licensee is the sponsor. The catered event must be within 100 miles of the licensee's regular place of business.

(4) The licensee shall notify the local law enforcement agency that has jurisdiction over the premises that the catered event is to be held. A fee of \$35 must accompany the notice.

(5) The sale of beer or beer and wine pursuant to a catering endorsement is subject to the provisions of 16-6-103.

(6) The sale of beer or beer and wine pursuant to a catering endorsement is subject to the provisions of 16-3-306, unless entities named in 16-3-306 give their written approval for the on-premises sale of beer or beer and wine on premises where the event is to be held.

(7) A catering endorsement issued for the purpose of selling and serving beer or beer and wine at a special event conducted on the premises of a county fairground or public sports arena authorizes the licensee to sell and serve beer or beer and wine in the grandstand and bleacher area of the premises, as well as from a booth, stand, or other fixed place on the premises.

*(8) A licensee may not share revenue from the sale of alcoholic beverages with the sponsor of the catered event unless the sponsor is the state of Montana, a political subdivision of the state, or a qualified entity under section 501(c) of the Internal Revenue Code, 26 U.S.C. 501(c), as amended."*

**Section 3.** Section 16-4-204, MCA, is amended to read:

**"16-4-204. Transfer — catering endorsement.** (1) (a) Except as provided in subsection (1)(b), a license may be transferred to a new ownership and to a location outside the quota area for which it was originally issued only when the following criteria are met:

(i) the total number of all-beverages licenses in the original quota area exceeded the quota for that area by at least 25% in the most recent census prescribed in 16-4-502;

(ii) the total number of all-beverages licenses in the quota area to which the license would be transferred, exclusive of those issued under 16-4-209(1)(a) and (1)(b), did not exceed that area's quota in the most recent census prescribed in 16-4-502:

(A) by more than 33%; or

(B) in an incorporated city of more than 10,000 inhabitants and within a distance of 5 miles from its corporate limits by more than 43%; and

(iii) the department finds, after a public hearing, that the public convenience and necessity would be served by such a transfer.

(b) A license within an incorporated quota area may be transferred to a new ownership and to a new unincorporated location within the same county on application to and with consent of the department when the quota of the all-beverages licenses in the original quota area, exclusive of those issued under 16-4-209(1)(a) and (1)(b), exceeds the quota for that area by at least 25% in the most recent census and will not fall below that level because of the transfer.

(c) For 3 years after the transfer of a license between quota areas under subsection (1)(a), the license may not be mortgaged or pledged as security and

may not be transferred to another person except for a transfer by inheritance upon the death of the licensee.

(d) Once a license is transferred to a new quota area under subsection (1)(a), it may not be transferred to another quota area or back to the original quota area.

(e) A license issued under 16-4-209(1)(a) may not be transferred to a location outside the quota area and the exterior boundaries of the Montana Indian reservation for which it was originally issued.

(2) (a) Any all-beverages licensee is, upon the approval and in the discretion of the department, entitled to a catering endorsement to the licensee's all-beverages license to allow the catering and sale of alcoholic beverages to persons attending a special event upon premises not otherwise licensed for the sale of alcoholic beverages for on-premises consumption. The alcoholic beverages must be consumed on the premises where the event is held.

(b) A written application for a catering endorsement and an annual fee of \$250 must be submitted to the department for its approval.

(c) An all-beverages licensee who holds an endorsement granted under this subsection (2) may not cater an event in which the licensee is the sponsor. The catered event must be within 100 miles of the licensee's regular place of business.

(d) The licensee shall notify the local law enforcement agency that has jurisdiction over the premises where the catered event is to be held. A fee of \$35 must accompany the notice.

(e) The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions of 16-6-103.

(f) The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions of 16-3-306, unless entities named in 16-3-306 give their written approval.

(g) A catering endorsement issued for the purpose of selling and serving beer at a special event conducted on the premises of a county fairground or public sports arena authorizes the licensee to sell and serve beer in the grandstand and bleacher area of the premises, as well as from a booth, stand, or other fixed place on the premises.

(h) *A licensee may not share revenue from the sale of alcoholic beverages with the sponsor of the catered event unless the sponsor is the state of Montana, a political subdivision of the state, or a qualified entity under section 501(c) of the Internal Revenue Code, 26 U.S.C. 501(c), as amended.*

**Section 4.** Section 16-4-301, MCA, is amended to read:

**"16-4-301. Special permits to sell all alcoholic beverages, beer, and table wine — application and issuance.** (1) (a) ~~Any association or corporation~~ *An organization or institution that has a tax-exempt designation under the provisions of section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3), as amended, that is organized and operated to raise funds for a needy person, or that is an accredited Montana postsecondary school and conducting a picnic, convention, fair, civic or community enterprise, or sporting event is, in the discretion of the department, entitled to* that conducts a special event may receive a special permit to sell beer and table wine to the patrons of that special event, and except as provided in subsection (1)(c), the beer and wine must be

~~consumed within the enclosure in which the event is held.~~ An organization may receive up to three special permits a year.

(b) A civic league or organization that has a tax-exempt designation under section 501(c)(4) of the Internal Revenue Code, 26 U.S.C. 501(c)(4), as amended, or an organization authorized by an accredited Montana postsecondary school to engage in fundraising activities for intercollegiate athletics that has a tax-exempt designation under the provisions of section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3), as amended, may receive up to 12 special permits a year to sell beer and table wine. For purposes of fundraising activities for intercollegiate athletics, only one organization for each Montana postsecondary school may be authorized to apply for and receive special permits under this section. All net earnings from the sale of beer and table wine must be contributed to the state of Montana or a political subdivision of the state or must be devoted to purposes required of entities under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3), as amended.

(c) An association or corporation engaged in professional sporting contests or junior hockey contests may receive one special permit to sell beer and table wine covering the entire season of play if:

(i) the association or corporation is sanctioned by a sports organization that regulates the specific sport;

(ii) the season of play of the sport is specified in advance;

(iii) an admission fee to the contests is charged; and

(iv) the contest events are held in facilities that provide seating for at least 1,000 patrons.

(d) A chamber of commerce or business league that has a tax-exempt designation under section 501(c)(6) of the Internal Revenue Code, 26 U.S.C. 501(c)(6), as amended, may receive up to 12 special permits a year to sell beer and table wine. A chamber of commerce may not use one of its special permits for an event conducted by a business league and a business league may not use one of its permits for an event conducted by a chamber of commerce. The chamber of commerce or business league receiving a special permit must obtain liquor liability insurance for any event it conducts.

(e) The beer and wine sold under this subsection (1) must be consumed at the time when and within the enclosure where the special event, activity, or sporting contest is held.

~~(b)(f) The~~ An application of the association or corporation for a special permit must be presented 3 days in advance, but the department may, for good cause, waive the 3-day requirement. ~~and~~ The application must describe the location of the enclosure where the special event, activity, or sporting contest is to be held, the nature of the special event, activity, or sporting contest, and the period during which it is contemplated that the special event, activity, or sporting contest will be held. An application for a permit for professional sporting contests or junior hockey contests under subsection (1)(c) must provide the inclusive dates of the season of play for the sporting contest. The application must be accompanied by the amount of the permit fee and a written statement of approval of the premises where the special event, activity, or sporting contest is to be held issued by the local law enforcement agency that has jurisdiction over the premises where the event is to be held.

~~(c) The permit issued to the association or corporation is a special permit but does not authorize the sale of beer and table wine except starting 1 day before~~

~~the regular period when events are being held upon the grounds, during the period described in the application, and for 1 day after the period described in the application.~~

~~(d)~~(g) A special permit issued under this subsection (1) for the purpose of selling and serving beer at ~~an~~ a *special event, activity, or sporting contest* conducted on the premises of a county fairground or public sports arena authorizes the permit holder to sell and serve beer in the grandstand and bleacher area of the premises, as well as from a booth, stand, or other fixed place on the premises.

~~(e)~~(h) For the purposes of this subsection (1), a post of a nationally chartered veterans' organization or a lodge of a recognized national fraternal organization otherwise licensed under this code is an ~~association entitled to~~ *organization that may receive* special permits for three *special* events a year, as described in subsection (1)(a), to sell beer and table wine. All net proceeds must go to the post or lodge acquiring the special permit.

(2) (a) A post of a nationally chartered veterans' organization or a lodge of a recognized national fraternal organization not otherwise licensed under this code ~~is, in the discretion of the department~~ *may receive*, without notice or hearing as provided in 16-4-207, ~~entitled to~~ a special permit to sell beer and table wine or a special permit to sell all alcoholic beverages at the post or lodge to members and their guests only, to be consumed within the hall or building of the post or lodge.

(b) The application of a nationally chartered veterans' organization or lodge of a recognized national fraternal organization must describe the location of the hall or building where the special permit will be used and the date it will be used.

(c) The special permit may be issued for a 24-hour period only, ending at 2 a.m., and the department may not issue more than 12 special permits to any post or lodge during a calendar year."

**Section 5.** 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 domestic winery producing more than 25,000 gallons of wine, \$400; each domestic winery producing 25,000 gallons or less of wine, \$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) ~~of \$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) those events lasting 2 or more days, but the fee may not exceed \$300 for a series of scheduled sporting events; 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 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) Each licensee licensed under the quotas of 16-4-201 shall pay an annual license fee as follows:

(a) except as provided in this section, 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) except as provided in this section, 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) except as provided in this section, 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. All licenses, however, 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 special beer and table wine license for a nonprofit arts organization under 16-4-303 is \$250.

(10) 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.

(11) 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.

(12) All license and permit fees collected under this section must be deposited as provided in 16-2-108."

**Section 6. Effective date.** [This act] is effective on passage and approval.

Approved April 16, 2003

## CHAPTER NO. 370

[SB 159]

AN ACT PROVIDING THAT CERTAIN PROPERTY OWNED BY A RAILROAD AND LEASED BY A NONPROFIT ORGANIZATION OR A GOVERNMENT ENTITY IS EXEMPT FROM PROPERTY TAXES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

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

**Section 1. Property on railroad land leased by nonprofit organizations.** (1) A building and appurtenant land or just the appurtenant land, not exceeding 2.5 acres, owned by a railroad as defined in 69-14-101 and leased for less than \$100 a year to a nonprofit organization exempt from taxation under section 26 U.S.C. 501(c)(3) or to a government entity is exempt from property taxation if:

(a) the building was constructed on a railroad right-of-way by a railroad prior to the year 2000; and

(b) the property is directly used for purely public charitable purposes.

(2) A building and land exempted under this section are subject to fees and assessments for services and special improvements that are collected with property taxes.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 15, chapter 6, part 2, and the provisions of Title 15, chapter 6, part 2, apply to [section 1].

**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, 2002.

Approved April 16, 2003

## CHAPTER NO. 371

[SB 284]

AN ACT REVISING THE PROCEDURE A COUNTY AUDITOR IS REQUIRED TO FOLLOW TO PROCESS A CLAIM; ESTABLISHING TIMEFRAMES WITHIN WHICH INVESTIGATION OF CERTAIN CLAIMS MUST BE COMPLETED; PROVIDING TIMEFRAMES AND PROCEDURES FOR DISAPPROVING A CLAIM; AUTHORIZING A BOARD OF COUNTY COMMISSIONERS, UPON A MAJORITY VOTE, TO ORDER PAYMENT OF A CLAIM DISAPPROVED BY A COUNTY AUDITOR; PROVIDING FOR AN APPEAL TO DISTRICT COURT WITHIN 7 WORKING DAYS IF A BOARD OF COUNTY COMMISSIONERS ORDERS PAYMENT OF A DISAPPROVED CLAIM; AMENDING SECTION 7-6-2407, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 7-6-2407, MCA, is amended to read:

**“7-6-2407. Auditing Examination and investigation of claims.** (1) It shall be the duty of persons holding claims against any county having a county auditor to present the same claims to the county auditor, whose duty it shall be to audit the same. ~~The county auditor shall also investigate and examine all claims presented. to him and report the same with his finding to the board of county commissioners at their regular session after such investigation shall have been completed, with his approval or disapproval endorsed thereon, and he shall keep a complete record of all such claims and of his investigations and examinations of the same in a book kept for that purpose.~~

(2) (a) Within 30 days of receipt of a claim in the office of the county auditor, the county auditor shall approve the claim, disapprove the claim, or notify the board of county commissioners, the claimant, and any affected county elected officials or department heads in writing that the claim requires further investigation.

(b) Further investigation of a claim must be completed and an approval or disapproval of payment of the claim must be issued within 60 days from the date that the county auditor provides the written notification required in subsection (2)(a).

(3) (a) The county auditor shall report approved claims to the board of county commissioners at its regular meeting after investigations into the claims have been completed.

(b) *The county auditor shall keep a complete record of all claims submitted and investigations and examinations of the claims.*

~~(2)~~(4) In all counties having a county auditor:

(a) all bills, claims, accounts, or charges for materials of any kind or nature that may be purchased by and on behalf of the county by any of the county officers or contracted for by the county commissioners ~~shall~~ *must* be investigated, examined, and inspected by the county auditor, who shall ~~endorse his approval or disapproval thereon~~ *approve or disapprove payment of the claims* before any warrant for the payment of the ~~same can~~ *claims may* be drawn;

(b) ~~no~~ a claim against the county ~~shall~~ *may not* be paid or a warrant drawn ~~therefor for the claim unless the same shall have~~ *claim has the approval of the county auditor; provided, however, that the judge of the district court of the county where any. If claim has been disapproved by the county auditor disapproves payment of a claim:*

(i) *the auditor shall, within 5 days of the disapproval, provide written documentation to the board of county commissioners, the claimant, and any affected county elected officials or department heads specifying the reasons for the disapproval;*

(ii) *the auditor shall, within 15 days of the disapproval, present documentation and testimony in support of the disapproval of the claim to the board of county commissioners in a public hearing at a properly noticed and regularly scheduled meeting of the board of county commissioners; and*

(iii) *the board of county commissioners may order the payment of the same claim by a majority vote at a regular board meeting. If a majority of the board orders payment of the disapproved claim, the county auditor may appeal the decision to the district court within 7 working days. If the board's decision is not appealed within the required 7-day period, the claim must be paid."*

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

Approved April 16, 2003

## CHAPTER NO. 372

[SB 334]

AN ACT INCREASING THE NUMBER OF REPRESENTATIVES WHO MAY BE HIRED BY A VENDOR PROMOTING THE VENDOR'S PRODUCT IN THE STATE; REQUIRING THAT A VACANCY IN THE ONE REQUIRED REPRESENTATIVE POSITION BE FILLED WITHIN 60 DAYS; AND AMENDING SECTION 16-3-107, MCA.

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

**Section 1.** Section 16-3-107, MCA, is amended to read:

**"16-3-107. Resident representatives required.** (1) For the purposes of this section, "vendor" means a person, partnership, association, or corporation that sells liquor to the department.

(2) A vendor who desires to promote the sale of ~~his~~ *the vendor's* product in the state shall employ one representative and may employ ~~an~~ *two additional representative* representatives to promote the sale of the vendor's product. A

representative must be ~~or become after employment~~ a resident of the state ~~or become a resident after employment~~. ~~If a vacancy occurs in a representative position, the vendor shall fill the position within 60 days after the vacancy occurs.~~

(3) *If a vacancy occurs in the one required position, the vendor shall fill the position within 60 days after the vacancy occurs.*"

Approved April 16, 2003

## CHAPTER NO. 373

[HB 50]

AN ACT GENERALLY REVISING THE MONTANA FOOD, DRUG, AND COSMETIC ACT; REDEFINING THE TERM "BOTTLED WATER" TO CONFORM TO FEDERAL LAW; ELIMINATING REQUIREMENTS FOR WATER BOTTLERS UNDER THE ACT; DEFINING "DIETARY SUPPLEMENT" AND ADDING THE TERM TO THE DEFINITION OF "FOOD"; CLARIFYING THAT A FOOD SERVICE ESTABLISHMENT MEANS A PLACE THAT SERVES FOOD AT RETAIL TO THE PUBLIC; CLARIFYING THE DEFINITION OF "RETAIL MEAT ESTABLISHMENT"; ELIMINATING PERMIT REQUIREMENTS FOR MANUFACTURING, PROCESSING, OR PACKAGING FOOD BECAUSE THOSE REQUIREMENTS ARE PROVIDED FOR ELSEWHERE IN STATE LAW; AMENDING SECTIONS 50-31-103, 50-31-110, 50-31-208, 50-31-312, AND 50-31-501, MCA; AND REPEALING SECTIONS 50-31-205, 50-31-206, 50-31-207, 50-31-236, AND 50-31-238, MCA.

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

**Section 1.** Section 50-31-103, MCA, is amended to read:

**"50-31-103. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Advertisement" means representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing or that are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics.

~~(2) "Approved source" means water from a spring, artesian well, drilled well, municipal water supply, or other source that has been found by the department to be of a safe and sanitary quality.~~

~~(3) "Artesian water" means water that is forced from below the ground toward the surface through a well by natural underground pressure.~~

~~(4)~~(2) "Beef patty mix" means "hamburger" or "ground beef" to which have been added binders or extenders as those terms are understood by general custom and usage in the food industry.

~~(5)~~(3) "Bottled water" means ~~carbonated, demineralized, distilled, fluoridated, mineral, purified, sparkling, or other water that is from an approved source and that is disinfected and placed in a sealed container or package for human consumption~~ water that is intended for human consumption and that is sealed in bottles or other containers with no added ingredients, except that it may optionally contain safe and suitable antimicrobial agents.

~~(6)~~ "Carbonated water" or "sparkling water" means water that contains carbon dioxide.

~~(7)~~(4) "Color" includes black, white, and intermediate grays.

~~(8)~~(5) (a) "Color additive" means a material that:

(i) is a dye, pigment, or other substance made by a process of synthesis or similar artifice or that is extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source; or

(ii) when added or applied to a food, drug, or cosmetic or to the human body is capable (alone or through reaction with another substance) of imparting color to the human body.

(b) The term does not include material that has been or is exempted under the federal act.

~~(9)~~(6) (a) "Consumer commodity", except as otherwise specifically provided by this subsection, means any food, drug, device, or cosmetic as those terms are defined by this chapter or by the federal act and regulations pursuant to the federal act.

(b) The term does not include:

~~(a)~~(i) any tobacco or tobacco product;

~~(b)~~(ii) a commodity subject to packaging or labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136, et seq.) or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the act of March 4, 1913 (37 Stat. 832-833; 21 U.S.C. 151 through 157), commonly known as the Virus-Serum-Toxin Act;

~~(c)~~(iii) a drug subject to 50-31-306(1)(m) or 50-31-307(2)(c) or section 503(b)(1) or 506 of the federal act (21 U.S.C. 353(b)(1) and 356);

~~(d)~~(iv) a beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C. 201, et seq.); or

~~(e)~~(v) a commodity subject to the Federal Seed Act (7 U.S.C. 1551 through 1610).

~~(10)~~(7) "Contaminated with filth" applies to a food, drug, device, or cosmetic not securely protected from dust, dirt, and, as far as may be necessary by all reasonable means, from foreign or injurious contaminations.

~~(11)~~(8) "Cosmetic" means:

(a) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering the appearance;

(b) articles intended for use as a component of these articles, except that the term does not include soap.

~~(12)~~(9) "Counterfeit drug" means a drug, drug container, or drug label that, without authorization, bears the trademark, trade name, or other identifying mark, imprint, or device or any likeness thereof of a drug manufacturer, processor, packer, or distributor other than the person who in fact manufactured, processed, packed, or distributed the drug and that falsely purports or is represented to be the product of or to have been packed or distributed by the other drug manufacturer, processor, packer, or distributor.

~~(13) "Demineralized water" means water that has been demineralized by distillation, deionization, reverse osmosis, or other methods and that contains not more than 10 parts per million total solids.~~

~~(14)~~ (10) "Department" means the department of public health and human services provided for in 2-15-2201.

~~(15)~~ (11) "Device" (except when used in 50-31-107(2), 50-31-203(6), 50-31-306(1)(c) and (1)(q), 50-31-402(3), and 50-31-501(10)) means instruments, apparatus, and contrivances, including their components, parts, and accessories, intended:

(a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals; or

(b) to affect the structure or function of the body of humans or other animals.

(12) "Dietary supplement" means a product, other than a tobacco product, that is intended to supplement the diet and that:

(a) is advertised only as a food supplement;

(b) bears or contains one or more of the following ingredients:

(i) a vitamin;

(ii) a mineral;

(iii) an herb or other botanical substance;

(iv) an amino acid;

(v) a dietary substance used to supplement the diet by increasing the total dietary intake or a concentrate, metabolite, constituent, extract, or combination of any ingredients described in subsections (13)(b)(i) through (13)(b)(iv);

(c) conforms to any additional provisions for the definition of dietary supplement found at 21 U.S.C. 321.

~~(16) "Distilled water" means purified water that has been vaporized and condensed.~~

~~(17) "Drinking water" means water that has undergone purification, distillation, demineralization, mineralization, activated carbon or particulate filtration, fluoridation, carbonation, or other similar process or has undergone minimum treatment consisting of ozonation or an acceptable disinfection process.~~

~~(18)~~ (13) "Drug" means:

(a) articles recognized in the official United States Pharmacopoeia, official National Formulary, or a supplement to either of these;

(b) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals;

(c) articles (other than food) intended to affect the structure or function of the body of humans or other animals;

(d) articles intended for use as components of any article specified in subsection ~~(18)(a)~~ (14)(a), ~~(18)(b)~~ (14)(b), or ~~(18)(c)~~ (14)(c) but does not include devices or their components, parts, or accessories.

~~(19)~~ (14) "Federal act" means the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 301, et seq.).

~~(20) "Fluoridated water" means water that contains, naturally or by addition, fluoride ions in quantities of not less than 0.7 and not more than 1.4 milligrams per liter and that complies with the food and drug administration quality standards set forth in 21 CFR 103.35.~~

~~(21)~~ (15) "Food" means:

- (a) articles used for food or drink for humans or other animals;
- (b) chewing gum; ~~and~~
- (c) articles used for components of these articles; *and*
- (d) *dietary supplements.*

~~(22)~~ (16) (a) "Food additive" means a substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of food (including a substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food and including a source of radiation intended for this use), if the substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use.

(b) The term does not include:

- (i) a pesticide chemical in or on a raw agricultural commodity;
- (ii) a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of a raw agricultural commodity;
- (iii) a color additive;
- (iv) a substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the federal act, the Poultry Products Inspection Act (21 U.S.C. 451, et seq.), or the Meat Inspection Act of March 4, 1907 (34 Stat. 1260), as amended and extended (21 U.S.C. 603, et seq.).

~~(23)~~ (17) "Food service establishment" means a restaurant, catering vehicle, vending machine, delicatessen, fast-food retailer, or any other place that serves food *at retail* to the public for consumption, either at or away from the point of service, and any facility operated by a governmental entity where food is served.

~~(24)~~ (18) "Hamburger" or "ground beef" means ground fresh or frozen beef or a combination of both fresh and frozen beef, with or without the addition of suet, to which no water, binders, or extenders are added. There are four grades of hamburger or ground beef:

(a) "regular hamburger" or "regular ground beef" may have:

(i) a fat content no greater than the federal standard set forth in 9 CFR 319.15; and

(ii) a lean content of no less than 70%;

(b) "lean hamburger" or "lean ground beef" may have:

(i) a fat content no greater than 22%; and

(ii) a lean content of no less than 78%;

(c) "extra lean hamburger" or "extra lean ground beef" may have:

- (i) a fat content no greater than 16%; and
- (ii) a lean content of no less than 84%; and
- (d) "super lean hamburger" or "super lean ground beef" may have:
  - (i) a fat content no greater than 12%; and
  - (ii) a lean content of no less than 88%.

~~(25)~~(19) "Honey" means the nectar and saccharine plant exudations, gathered, modified, and stored in the comb by honey bees, that are levorotatory and that contain not more than 25% of water, not more than 0.25% of ash, and not more than 8% sucrose.

~~(26)~~(20) "Label" means a display of written, printed, or graphic matter on the immediate container of an article. "Immediate container" does not include package liners.

~~(27)~~(21) "Labeling" means labels and other written, printed, or graphic matter:

- (a) on an article or its containers or wrappers;
- (b) accompanying the article.

~~(28)~~(22) "Menu" means a list presented to the patron that states the food items for sale in a food service establishment.

~~(29)~~ "Mineral water" means water that contains more than 500 parts per million total dissolved mineral solids.

~~(30)~~(23) "New drug" means a drug, the composition of which is such that:

(a) it is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in its labeling; or

(b) the drug, as a result of investigations to determine its safety and effectiveness for use under the conditions prescribed, has become so recognized but that has not, other than in the investigations, been used to a material extent or for a material time under the conditions prescribed.

~~(31)~~(24) "Official compendium" means the official United States Pharmacopoeia, official National Formulary, or a supplement to either of these.

~~(32)~~(25) (a) "Package" means a container or wrapping in which a consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers.

(b) The term does not include:

(i) shipping containers or wrappings used solely for the transportation of a consumer commodity in bulk or in quantity to manufacturers, packers, or processors or to wholesale or retail distributors;

(ii) shipping containers or outer wrappings used by retailers to ship or deliver a commodity to retail customers if the containers and wrappings bear no printed matter pertaining to a particular commodity.

~~(33)~~(26) "Person" includes an individual, partnership, corporation, and association.

~~(34)~~(27) "Pesticide chemical" means a substance that alone, in chemical combination, or in formulation with one or more other substances is an "economic poison" under the Federal Insecticide, Fungicide, and Rodenticide



Act (7 U.S.C. 136, et seq.), as amended, and that is used in the production, storage, or transportation of raw agricultural commodities.

~~(35)~~ (28) "Placard" means a nonpermanent sign used to display or describe food items for sale in a food service establishment or retail *meat* establishment.

~~(36)~~ (29) "Principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

~~(37)~~ (30) "Processing" means cooking, baking, heating, drying, mixing, grinding, churning, separating, extracting, cutting, freezing, or otherwise manufacturing a food or changing the physical characteristics of a food; and the enclosure of the food in a package.

~~(38)~~ "Purified water" means water that is produced by distillation, deionization, reverse osmosis, or other method and that meets the definition of purified water in the 20th edition of the Pharmacopoeia of the United States of America, 1980.

~~(39)~~ (31) "Raw agricultural commodity" means food in its raw or natural state, including fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

~~(40)~~ (32) "Retail *meat* establishment" means a commercial establishment at which meat or meat products are displayed for sale or provision to the public, with or without charge.

~~(41)~~ "Spring water" means water that originates in an underground formation and flows naturally, without external force or vacuum, to a natural orifice in the surface of the earth.

~~(42)~~ (33) "Synthetically compounded" means a product formulated by a process that chemically changes a material or substance extracted from naturally occurring plant, animal, or mineral sources, except for microbiological processes.

~~(43)~~ "Water bottling plant" means a facility in which bottled water is produced.

~~(44)~~ "Well water" means water that:

~~(a)~~ is taken from below the ground through a piping device or similar installed device using external force or vacuum;

~~(b)~~ is not modified in its mineral content; and

~~(c)~~ may have undergone minimum treatment consisting of ozonization or an acceptable disinfection process."

**Section 2.** Section 50-31-110, MCA, is amended to read:

**"50-31-110. Certain agricultural chemicals not color additives.** Subsections ~~(7)~~ (5) and ~~(8)~~ (6) of 50-31-103 do not apply to a pesticide chemical, soil or plant nutrient, or other agricultural chemical *that affects the color of produce of the soil, whether before or after harvest*, solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological process of produce of the soil ~~and thereby affecting its color, whether before or after harvest.~~"

**Section 3.** Section 50-31-208, MCA, is amended to read:

**"50-31-208. Sale of hamburger and beef patty mix.** (1) ~~No~~ A food service establishment or retail *meat* establishment may *not* use the terms "hamburger",

“burger”, or other similar term in any advertisement or menu to refer to any beef patty mix. A food service establishment or retail *meat* establishment selling or serving beef patty mix may refer to the product as “beef patty mix” or by any other term ~~which~~ *that* accurately informs the customer of the nature of the food product ~~which he is being~~ sold or served.

(2) If beef patty mix is sold or served in a food service establishment or retail *meat* establishment, a list of ingredients must appear on the menu or label; or, if there is ~~no~~ *not* a menu or label, on a placard as follows:

(a) The term “beef patty mix” or any other term ~~which~~ *that* accurately informs the customer of the nature of the food product and its ingredients must be included.

(b) The ingredients must be listed in descending order of predominance by weight.

(c) ~~If there is no menu or label, the~~ The lettering on the placard must be at least 1 inch in height (72-point letters), in boldface, and in colors that contrast with the placard.

(d) The placard must be posted in a permanent place, conspicuous to the customer, in each room or area where food is served or sold at retail.

(3) If hamburger or ground beef is sold in a retail *meat* establishment, the grade of ~~hamburger or ground beef, as defined enumerated in 50-31-103(24)(19),~~ and the maximum fat and minimum lean content must appear on each displayed package or, if the product is not packaged for display, on a placard. If a placard is used, it must satisfy the requirements of subsections (2)(c) and (2)(d) ~~of this section.~~ The provisions of this subsection do not apply to the service of prepared hamburger or ground beef at a food service establishment.”

**Section 4.** Section 50-31-312, MCA, is amended to read:

**“50-31-312. Exemptions from new drug application requirement.** (1) Section 50-31-311 does not apply to:

(a) a drug intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety and effectiveness of drugs, provided the drug is plainly labeled in compliance with regulations issued by the department or pursuant to section 505(i) or 507(d) of the federal act (21 U.S.C. 355(i) or 357(d));

(b) a drug sold in this state at any time prior to the enactment of this chapter or introduced into interstate commerce at any time prior to the enactment of the federal act;

(c) any drug that is manufactured by an establishment licensed under 42 U.S.C. 262; or

(d) any drug that is subject to 50-31-306(1)(n).

(2) The provisions of 50-31-103(30)(24) do not apply to any drug, when the drug is intended solely for use under conditions prescribed, recommended, or suggested in labeling with respect to the drug, that on October 9, 1962, or on the date immediately preceding July 1, 1967:

(a) was commercially sold or used in this state or in the United States;

(b) was not a new drug as defined by 50-31-103(30)(24) as then in force; and

(c) was not covered by an effective application under 50-31-311 or under section 505 of the federal act (21 U.S.C. 355).”

**Section 5.** Section 50-31-501, MCA, is amended to read:

**“50-31-501. Prohibited acts.** The following acts and the causing of the acts within the state of Montana are prohibited:

- (1) the manufacture, sale or delivery, holding, or offering for sale of any food, drug, device, or cosmetic that is adulterated or misbranded;
- (2) the adulteration or misbranding of any food, drug, device, or cosmetic;
- (3) the receipt in commerce of any food, drug, device, or cosmetic that is adulterated or misbranded and the delivery or proffered delivery ~~thereof~~ *of any food, drug, device, or cosmetic* for pay or otherwise;
- (4) the sale, delivery for sale, holding for sale, or offering for sale of any article in violation of ~~50-31-205 or~~ 50-31-311;
- (5) the dissemination of any false advertisement;
- (6) the refusal to permit entry or inspection or to permit the taking of a sample, as authorized by 50-31-106;
- (7) the giving of a guaranty or undertaking ~~which if the guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by and containing the name and address of the a person residing in the state of Montana and from whom the person received in good faith the food, drug, device, or cosmetic;~~
- (8) the removal or disposal of a detained or embargoed article in violation of 50-31-509;
- (9) the alteration, mutilation, destruction, obliteration, ~~or removal of the whole or any part of the labeling of or the doing of or~~ *commission of* any other act with respect to a food, drug, device, or cosmetic ~~or the removal, in whole or in part, of the labeling of a food, drug, device, or cosmetic~~ if the act is done while the article is held for sale and results in the article being adulterated or misbranded;
- (10) forging, counterfeiting, simulating, or falsely representing or, without proper authority, using any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated under the provisions of this chapter ~~or of the federal act;~~
- (11) ~~the~~ using on the labeling of any drug or in any advertisement relating to the drug ~~of~~ any representation or suggestion that an application with respect to the drug is effective under 50-31-311 or that the drug complies with the provisions of 50-31-311;
- (12) in the case of a prescription drug distributed or offered for sale in this state, the failure of the manufacturer, packer, or distributor to maintain for transmittal or to transmit to any practitioner, licensed by applicable law to administer the drug *and* who makes written request for information as to the drug, true and correct copies of all printed matter that is required to be included in any package in which that drug is distributed or sold or other printed matter as is approved under the federal act. This subsection does not exempt any person from any labeling requirement imposed by or under other provisions of this chapter.
- (13) placing or causing to be placed upon any drug, ~~or~~ device, or container of a drug *or device*, with intent to defraud, the trade name, other identifying mark, or imprint of another or any likeness of the name, mark, or imprint;
- (14) selling, dispensing, disposing of, or causing to be sold, dispensed, or disposed of or concealing or keeping in possession, control, or custody, with

intent to sell, dispense, or dispose of, any drug, device, or any container of the drug or device with knowledge that the trade name, other identifying mark, or imprint of another or any likeness of any of the foregoing has been placed on the drug, device, or container in a manner prohibited by subsection (13);

(15) making, selling, disposing of, or causing to be made, sold, or disposed of or keeping in possession, control, or custody or concealing, with intent to defraud, any punch, die, plate, or other thing designed to print, imprint, or reproduce ~~that~~ a trade name, other identifying mark, or imprint of another or any likeness of the name, mark, or imprint upon any drug, device, or container of the drug or device;

(16) the using by any person to the person's own advantage or revealing, other than to officers or employees of the department or the courts when relevant in any judicial proceeding under this chapter, any information acquired under authority of this chapter concerning any method or process that as a trade secret is entitled to protection;

(17) the distribution in commerce of a consumer commodity; ~~as defined in this chapter~~, if the commodity is contained in a package or if there is affixed to that commodity a label ~~which~~ *that* does not conform to the provisions of this chapter and of regulations promulgated under authority of this chapter. This prohibition does not apply to persons engaged in business as wholesale or retail distributors of consumer commodities except to the extent that the persons:

- (a) are engaged in the packaging or labeling of the commodities; or
- (b) prescribe or specify by any means the manner in which the commodities are packaged or labeled.

(18) the labeling or packaging of a food, drug, *device*, or cosmetic ~~which~~ *that* fails to conform with the requirements of this chapter."

**Section 6. Repealer.** Sections 50-31-205, 50-31-206, 50-31-207, 50-31-236, and 50-31-238, MCA, are repealed.

Approved April 17, 2003

## CHAPTER NO. 374

[HB 67]

AN ACT GENERALLY REVISING AND UPDATING PROVISIONS GOVERNING PEDESTRIANS; ELIMINATING STATUTORY PROVISION FOR SCHOOL SAFETY PATROLS; PROHIBITING A VEHICLE OPERATOR FROM DRIVING PAST A SCHOOL CROSSING GUARD DIRECTING CHILDREN; DIRECTING WHERE A PEDESTRIAN MAY WALK WHEN SIDEWALKS OR SHOULDERS ARE NOT AVAILABLE; RESTRICTING STANDING ON A ROADWAY OR HIGHWAY FOR SOLICITING RIDES, BUSINESS, OR CONTRIBUTIONS; PROHIBITING A PERSON WHO IS UNDER THE INFLUENCE OF ALCOHOL OR ANY ILLEGAL DRUG FROM WALKING OR STANDING ON A ROADWAY OR SHOULDER EXCEPT IN AN AUTHORIZED CROSSWALK; REQUIRING PEDESTRIANS TO YIELD TO EMERGENCY VEHICLES; REQUIRING OPERATORS OF VEHICLES TO YIELD TO BLIND PEDESTRIANS; PROHIBITING PEDESTRIANS FROM ENTERING A RAILROAD GRADE CROSSING WHILE BARRIERS ARE CLOSED OR BEING OPENED OR CLOSED; AMENDING SECTIONS

20-3-106, 61-8-501, 61-8-502, 61-8-504, 61-8-506, 61-8-507, AND 61-8-508, MCA; AND REPEALING SECTION 20-1-408, MCA.

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

**Section 1.** Section 20-3-106, MCA, is amended to read:

**“20-3-106. Supervision of schools — powers and duties.** The superintendent of public instruction has the general supervision of the public schools and districts of the state and shall perform the following duties or acts in implementing and enforcing the provisions of this title:

- (1) resolve any controversy resulting from the proration of costs by a joint board of trustees under the provisions of 20-3-362;
- (2) issue, renew, or deny teacher certification and emergency authorizations of employment;
- (3) negotiate reciprocal tuition agreements with other states in accordance with the provisions of 20-5-314;
- (4) approve or disapprove the opening or reopening of a school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-505;
- (5) approve or disapprove school isolation within the limitations prescribed by 20-9-302;
- (6) generally supervise the school budgeting procedures prescribed by law in accordance with the provisions of 20-9-102 and prescribe the school budget format in accordance with the provisions of 20-9-103 and 20-9-506;
- (7) establish a system of communication for calculating joint district revenue in accordance with the provisions of 20-9-151;
- (8) approve or disapprove the adoption of a district's budget amendment resolution under the conditions prescribed in 20-9-163 and adopt rules for an application for additional direct state aid for a budget amendment in accordance with the approval and disbursement provisions of 20-9-166;
- (9) generally supervise the school financial administration provisions as prescribed by 20-9-201(2);
- (10) prescribe and furnish the annual report forms to enable the districts to report to the county superintendent in accordance with the provisions of 20-9-213(6) and the annual report forms to enable the county superintendents to report to the superintendent of public instruction in accordance with the provisions of 20-3-209;
- (11) approve, disapprove, or adjust an increase of the average number belonging (ANB) in accordance with the provisions of 20-9-313 and 20-9-314;
- (12) distribute BASE aid and special education allowable cost payments in support of the BASE funding program in accordance with the provisions of 20-9-331, 20-9-333, 20-9-342, 20-9-346, 20-9-347, and 20-9-366 through 20-9-369;
- (13) provide for the uniform and equal provision of transportation by performing the duties prescribed by the provisions of 20-10-112;
- (14) request, accept, deposit, and expend federal money in accordance with the provisions of 20-9-603;

(15) authorize the use of federal money for the support of an interlocal cooperative agreement in accordance with the provisions of 20-9-703 and 20-9-704;

(16) prescribe the form and contents of and approve or disapprove interstate contracts in accordance with the provisions of 20-9-705;

(17) approve or disapprove the conduct of school on a Saturday in accordance with the provisions of 20-1-303;

(18) recommend standards of accreditation for all schools to the board of public education and evaluate compliance with the standards and recommend accreditation status of every school to the board of public education in accordance with the provisions of 20-7-101 and 20-7-102;

(19) collect and maintain a file of curriculum guides and assist schools with instructional programs in accordance with the provisions of 20-7-113 and 20-7-114;

(20) establish and maintain a library of visual, aural, and other educational media in accordance with the provisions of 20-7-201;

(21) license textbook dealers and initiate prosecution of textbook dealers violating the law in accordance with the provisions of the textbooks part of this title;

(22) as the governing agent and executive officer of the state of Montana for K-12 career and vocational/technical education, adopt the policies prescribed by and in accordance with the provisions of 20-7-301;

(23) supervise and coordinate the conduct of special education in the state in accordance with the provisions of 20-7-403;

(24) administer the traffic education program in accordance with the provisions of 20-7-502;

(25) administer the school food services program in accordance with the provisions of 20-10-201 through 20-10-203;

(26) review school building plans and specifications in accordance with the provisions of 20-6-622;

~~(27) prescribe the method of identification and signals to be used by school safety patrols in accordance with the provisions of 20-1-408;~~

~~(28)~~(27) provide schools with information and technical assistance for compliance with the student assessment rules provided for in 20-2-121 and collect and summarize the results of the student assessment for the board of public education and the legislature;

~~(29)~~(28) upon request and in compliance with confidentiality requirements of state and federal law, disclose to interested parties all school district student assessment data for a test required by the board of public education;

~~(30)~~(29) administer the distribution of guaranteed tax base aid in accordance with 20-9-366 through 20-9-369; and

~~(31)~~(30) perform any other duty prescribed from time to time by this title, any other act of the legislature, or the policies of the board of public education.”

**Section 2.** Section 61-8-501, MCA, is amended to read:

**“61-8-501. Pedestrians subject to traffic regulations.** (1) *A pedestrian shall obey the instructions of any traffic control device that is specifically applicable to the pedestrian unless otherwise directed by a police officer.*

(2) Pedestrians ~~shall be~~ are subject to traffic control signals *and pedestrian control signals* at intersections as provided in 61-8-207 and 61-8-208. ~~unless required by local ordinance to comply strictly with such signals, but at~~

(3) At all other places, pedestrians ~~shall be~~ are accorded the privileges and ~~shall be~~ are subject to the restrictions ~~stated~~ provided in this part.

~~(2)(4) Local authorities are hereby empowered by ordinance to require that pedestrians shall strictly comply with the directions of any official traffic control signal and may by ordinance prohibit pedestrians from crossing any a roadway in a business district or any designated highways within a local government's jurisdiction, except in a marked crosswalk or in an unmarked crosswalk at an intersection."~~

**Section 3.** Section 61-8-502, MCA, is amended to read:

**"61-8-502. Pedestrians' right-of-way in crosswalk — school children.**

(1) (a) Except as provided in subsection (1)(b), when traffic control signals are not in place or not in operation, the ~~driver~~ operator of a vehicle shall yield the right-of-way, slowing down or stopping if ~~need be to so yield~~ necessary, to a pedestrian crossing the roadway within a marked crosswalk or within an unmarked crosswalk at an intersection, but a pedestrian may not suddenly leave a curb or other place of safety and walk or run into the path of a vehicle that is so close that it is impossible for the ~~driver~~ operator to yield. This provision does not apply under the conditions ~~stated~~ provided in 61-8-503(2).

(b) When a vehicle is stopped at a marked crosswalk or at an unmarked crosswalk at an intersection, the ~~driver~~ operator of a vehicle may make a right-hand turn if the pedestrian is in the opposite half of the roadway and is not in danger.

(2) When a vehicle is stopped at a marked crosswalk or at an unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the ~~driver~~ operator of any other vehicle approaching from the rear may not overtake and pass the stopped vehicle.

(3) ~~It is unlawful for any~~ A person ~~may not to drive operate a motor~~ vehicle through a column of school children crossing a ~~street or highway roadway~~ or past a ~~member of the school safety patrol~~ school crossing guard while the ~~member of the school safety patrol~~ crossing guard is directing the movement of children across a ~~street or highway roadway~~ and while the ~~school safety patrol member~~ crossing guard is holding an official ~~signal~~ sign in the stop position."

**Section 4.** Section 61-8-504, MCA, is amended to read:

**"61-8-504. Drivers Operators to exercise due care.** Notwithstanding the foregoing provisions of this part 61-8-501 through 61-8-503, every ~~driver~~ operator of a vehicle shall exercise due care to avoid colliding with ~~any~~ a pedestrian or with ~~any~~ a person operating a bicycle propelling a human-powered vehicle or using an assistive mobility device upon ~~any~~ a roadway, and shall give warning by sounding the horn when necessary, and shall exercise proper precaution upon observing ~~any~~ a child or ~~any~~ an obviously confused, or incapacitated, or intoxicated person upon a roadway."

**Section 5.** Section 61-8-506, MCA, is amended to read:

**"61-8-506. Pedestrians on roadways and highways.** (1) Where sidewalks are provided, ~~it shall be unlawful for any pedestrian to~~ and their use is practicable, a pedestrian may not walk along and upon an adjacent roadway.

(2) Where sidewalks are not provided, ~~any~~ a pedestrian, *other than an intoxicated pedestrian referred to in 61-8-508, who is walking along and upon a highway shall, when practicable, may walk only on the left side of the roadway or its shoulder facing traffic which may approach from the opposite direction shoulder, as far as practicable from the edge of the roadway.*

**Section 6.** Section 61-8-507, MCA, is amended to read:

**“61-8-507. Pedestrian soliciting rides, or business, or contributions.**

(1) ~~No~~ A person ~~shall may not~~ stand ~~in on~~ a roadway for the purpose of soliciting a ride, employment, or business from the occupant of any vehicle.

(2) ~~No~~ A person ~~shall may not~~ stand on or in proximity to a street or highway for the purpose of soliciting ~~the watching or guarding of any vehicle while parked or about to be parked on a street or highway~~ employment, business, or contributions from the occupant of a vehicle unless the solicitation is authorized by the proper jurisdictional authority.”

**Section 7.** Section 61-8-508, MCA, is amended to read:

**“61-8-508. Intoxicated pedestrian.** ~~No~~ Except in an authorized crosswalk, a person ~~shall walk upon or along the highway while~~ who is under the influence of ~~intoxicating liquor~~ alcohol or any drug may walk or stand in the public right-of-way, as defined in 60-1-103, but not on a roadway or a shoulder as is otherwise permissible under 61-8-506(2).”

**Section 8. Pedestrian to yield to authorized emergency vehicle.** (1)

Upon the immediate approach of an authorized emergency vehicle making use of an audible signal that meets the requirements of 61-9-401(4) and visual signals that meet the requirements of 61-9-402 or of a police vehicle that is properly making use of an audible signal, a pedestrian shall yield the right-of-way to the authorized emergency vehicle or police vehicle.

(2) This section does not relieve the operator of an authorized emergency vehicle or a police vehicle from the duty to drive with due regard for the safety of all individuals using the highway or from the duty to exercise due care to avoid colliding with a pedestrian.

**Section 9. Operator of vehicle to yield to blind pedestrian.** On a way of the state open to the public, the operator of a vehicle shall yield the right-of-way to a blind pedestrian who is carrying a visible white cane or who is accompanied by a guide dog.

**Section 10. Pedestrians at railroad crossings.** A pedestrian may not pass through, around, over, or under a crossing gate or barrier at a railroad grade crossing while the gate or barrier is closed or is being opened or closed.

**Section 11. Repealer.** Section 20-1-408, MCA, is repealed.

**Section 12. Codification instruction.** [Sections 8 through 10] are intended to be codified as an integral part of Title 61, chapter 8, part 5, and the provisions of Title 61, chapter 8, part 5, apply to [sections 8 through 10].

Approved April 17, 2003



**CHAPTER NO. 375**

[HB 98]

AN ACT GENERALLY REVISING LAWS RELATING TO PROFESSIONAL AND OCCUPATIONAL LICENSING; PROVIDING THAT THE ADOPTION OF CERTAIN RULES BY THE BOARD OF ATHLETICS IS DISCRETIONARY; PROVIDING THAT CERTAIN BOXING AND WRESTLING LICENSES ARE NOT RENEWABLE; PROVIDING THAT THE ADOPTION OF CERTAIN RULES BY THE BOARD OF PUBLIC ACCOUNTANTS IS DISCRETIONARY; PROVIDING THAT THE CREDENTIALS OF A FOREIGN ACCOUNTANT BE RECOGNIZED RATHER THAN REGISTERED; EXPANDING THE GROUNDS FOR WAIVING AN EXAMINATION FOR FOREIGN OR OUT-OF-STATE CERTIFIED PUBLIC ACCOUNTANTS AND LICENSED PUBLIC ACCOUNTANTS; PROVIDING THAT THE BOARD OF REALTY REGULATION MAY REQUIRE SPECIFIC PERFORMANCE LEVELS OF LICENSEES WHO TAKE CERTAIN KINDS OF CONTINUING EDUCATION COURSES; REQUIRING FINGERPRINT CHECKS FOR LICENSE APPLICANTS BY THE BOARD OF PRIVATE SECURITY PATROL OFFICERS AND INVESTIGATORS; CLARIFYING LICENSE APPLICATION REQUIREMENTS FOR APPLICANTS OTHER THAN INDIVIDUALS APPLYING FOR LICENSURE BY THE BOARD OF PRIVATE SECURITY PATROL OFFICERS AND INVESTIGATORS; ELIMINATING THE REQUIREMENT FOR MAINTAINING A DIRECTORY OF REAL ESTATE BROKERS AND SALESPERSONS; ELIMINATING THE REQUIREMENT FOR MAINTAINING A ROSTER OF LICENSED AND CERTIFIED REAL ESTATE APPRAISERS; AMENDING SECTIONS 23-3-405, 23-3-501, 37-50-102, 37-50-203, 37-50-301, 37-50-311, 37-50-312, 37-50-313, 37-50-335, 37-51-204, 37-60-303, AND 37-60-304, MCA; REPEALING SECTIONS 37-51-307 AND 37-54-110, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 23-3-405, MCA, is amended to read:

**“23-3-405. Rules.** (1) The board may adopt rules for the administration and enforcement of this chapter.

(2) (a) The rules must include ~~but are not limited to the following:~~

~~(a)~~ the granting, ~~renewal~~, suspension, and revocation of licenses and the qualification requirements for those to be licensed to conduct matches or exhibitions or to be licensed as referees, managers, or judges. ~~Such License~~ qualifications must include appropriate knowledge, experience, and integrity.

(b) *The rules may include but are not limited to the following:*

~~(b)~~(i) the labeling of a match as a championship match;

~~(c)~~(ii) the number and length of rounds and the weight of gloves;

~~(d)~~(iii) the extent and timing of the physical examination of contestants;

~~(e)~~(iv) the attendance of a referee and ~~his~~ *the referee's* powers and duties; and

~~(f)~~(v) review of decisions made by officials.

(3) The rules ~~shall~~ *must* meet or exceed the safety codes required by recognized professional boxing and wrestling organizations and provide reasonable measures for the fair conduct of the matches or exhibitions and for

the protection of the health and safety of the contestants. The rules ~~shall~~ *must* require a physical examination of each contestant prior to each match or exhibition and the attendance of a licensed physician at ringside and ~~shall~~ *must* provide for the qualifications of judges, referees, and seconds and for ~~the~~ *their* payment of such officials by the promoter.”

**Section 2.** Section 23-3-501, MCA, is amended to read:

**“23-3-501. Licenses — fees.** (1) The board may issue a ~~renewable~~ license to a professional or semiprofessional boxing or wrestling promoter, whether an individual or organization, for the sole purpose of conducting professional or semiprofessional matches or exhibitions.

(2) The board may issue ~~renewable~~ licenses to qualified referees, managers, boxers, wrestlers, seconds, trainers, and judges.

(3) A license issued in accordance with subsections (1) and (2) expires on the date set by department rule and ~~may be renewed upon payment of a fee set by the board.~~

(4) Each application for a license under this section must be accompanied by a fee, *commensurate with costs for that license, as provided in 37-1-134, as set by the board, commensurate with costs related to the particular license as provided in 37-1-134.*”

**Section 3.** Section 37-50-102, MCA, is amended to read:

**“37-50-102. Exemptions.** ~~Nothing contained in this~~ *This chapter shall does not* prohibit any person *who is* not a certified public accountant or licensed public accountant from serving as an employee of or an assistant to a certified public accountant or a licensed public accountant holding a permit to practice under 37-50-314, ~~or a partnership or corporation composed of certified public accountants or licensed public accountants registered under this chapter, or a foreign accountant registered whose credentials have been recognized under 37-50-313, provided that such~~ *However, the* employee or assistant ~~shall~~ *may* not issue any accounting or financial statement ~~over his~~ *in the employee's or assistant's* name.”

**Section 4.** Section 37-50-203, MCA, is amended to read:

**“37-50-203. Rules of the board.** (1) The board may adopt rules, consistent with the purposes of this chapter, as it considers necessary.

(2) The board shall adopt:

(a) rules of professional conduct appropriate to establish and maintain a high standard of integrity, dignity, and competency in the profession of public accounting, including competency in specific fields of public accounting;

(b) rules of procedure governing the conduct of matters before the board;

(c) rules governing education requirements, as provided in 37-50-305, for issuance of the certificate of a certified public accountant and the license for licensed public accountant;

~~(d) rules governing partnerships and corporations practicing public accounting, including but not limited to rules concerning their style, name, title, and affiliation with any other organization and establishing reasonable standards with respect to professional liability insurance and unimpaired capital and prescribing joint and several liability for torts relating to professional services for shareholders of any corporation failing to comply with the standards;~~

~~(d)~~ rules defining requirements for accounting experience, not exceeding 2 years, for issuance of the initial permit; and

~~(e)~~ rules to enforce the provisions of this chapter. The purpose of the rules must be to provide for the monitoring of the profession of public accounting and to maintain the quality of the accounting profession.

(3) *The board may adopt rules:*

(a) *governing partnerships, corporations, and other types of entities practicing public accounting, including but not limited to rules concerning style, name, title, and affiliation with other organizations;*

(b) (i) *establishing reasonable standards with respect to professional liability insurance and unimpaired capital; and*

(ii) *prescribing joint and several liability for torts relating to professional services for shareholders of a corporation or owners of other types of entities that fail to comply with standards established pursuant to subsection (3)(b)(i); and*

(c) *establishing education and experience qualifications for out-of-state and foreign accountants seeking authorization to practice in Montana."*

**Section 5.** Section 37-50-301, MCA, is amended to read:

**"37-50-301. Illegal use of title.** (1) 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 certificate as a certified public accountant under this chapter. However, a foreign accountant ~~who has registered~~ *whose credentials are recognized* under the provisions of 37-50-313 shall 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.

(2) A partnership or corporation 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 partnership or corporation is composed of certified public accountants pursuant to the requirements of 37-50-330 unless it is registered as required under 37-50-335.

(3) A person may not assume or use the title or designation "licensed public accountant", "public accountant", or any other title, designation, words, letters, abbreviation, sign, card, or device indicating that the person is a public accountant unless the person holds a current license as a licensed public accountant under this chapter.

(4) A partnership or corporation may not assume or use the title or designation "licensed public accountant", "public accountant", or any other title, designation, words, letters, abbreviation, sign, card, or device indicating that the partnership or corporation is composed of public accountants unless it is registered as required under 37-50-335.

(5) A person, corporation, or partnership 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 public accountant", "public accountant" or any of the abbreviations "CA", "EA", "LA", or "RA" or similar abbreviations likely to be confused with "CPA".

However, a foreign accountant ~~who has registered~~ *whose credentials are recognized* under 37-50-313 shall 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".

(6) A person may not sign or affix the person's name or any trade or assumed name used by the person in the person's profession or business with any wording indicating that the person has expert knowledge in accounting or auditing to any accounting or financial statement or to any opinion on, report on, or certificate to any accounting or financial statement unless the person holds a current permit issued under 37-50-314 and all of the person's offices in this state for the practice of public accounting are maintained and registered under 37-50-335. However, the provisions of this subsection do not prohibit any officer, employee, partner, or principal of any organization from affixing a signature to any statement or report in reference to the financial affairs of that organization with any wording designating the position, title, or office that the person holds in that organization, nor do the provisions of this subsection prohibit any act of a public official or public employee in the performance of the official's or employee's public duties.

(7) A person may not sign or affix a partnership or corporation name with any wording indicating that it is a partnership or corporation composed of persons having expert knowledge in accounting or auditing to any accounting or financial statement or to any report on or certificate to any accounting or financial statement unless the partnership or corporation conforms to the requirements of 37-50-330 and is registered as required under 37-50-335.

(8) A person may not assume or use the title or designation "certified public accountant" or "public accountant" in conjunction with names indicating or implying that there is a partnership or corporation or in conjunction with the designation "and company" or "and co." or a similar designation if there is in fact no bona fide partnership or corporation 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."

**Section 6.** Section 37-50-311, MCA, is amended to read:

**"37-50-311. Certified public accountants — waiver of examination for holders of foreign or out-of-state licenses, certificates, permits, or degrees.** The board in its discretion may waive the examination and issue a certificate as a certified public accountant to any person otherwise eligible ~~therefor~~ who is the holder of:

(1) a certificate, license, or permit as a certified public accountant, then in full force and effect, issued under the laws of any state; ~~or~~

(2) ~~is the holder of~~ a certificate, license, or degree in a foreign country constituting a recognized qualification for the practice of public accounting in ~~such~~ *that* country, comparable to that of a certified public accountant in this state, which is then in full force and effect; ~~where the requirements entitling him to practice as such certified public accountant were substantially equivalent to those in force in the state of Montana at the time the certificate was originally issued; or~~

(3) a certificate, license, or degree that the board considers to be subject to requirements or qualifications substantially equivalent to or greater than the requirements of this state at the time of the holder's application."

**Section 7.** Section 37-50-312, MCA, is amended to read:

**"37-50-312. Public accountants — waiver of examination for holders of out-of-state license.** The board in its discretion may waive the examination and register as a licensed public accountant any person otherwise eligible ~~therefor~~ who is the holder of:

(1) a license as a licensed public accountant, then in full force and effect, issued under the laws of any state; ~~or is~~

(2) ~~the holder of~~ a license or degree in a foreign country constituting a recognized qualification for the practice of public accounting in ~~such that~~ country, comparable to that of a licensed public accountant in this state, which is then in full force and effect, ~~where the requirements entitling him to practice as such licensed public accountant were substantially equivalent to those in force in the state of Montana at the time the license was originally issued;~~ or

(3) a certificate, license, or degree that the board considers to be subject to requirements or qualifications substantially equivalent to or greater than the requirements of this state at the time of the holder's application."

**Section 8.** Section 37-50-313, MCA, is amended to read:

**"37-50-313. Registration Recognition of credentials of foreign accountants — restriction on title used — practice.** (1) The board may in its discretion ~~permit the registration~~ recognize the credentials of any person of good moral character who is the holder of a certificate, license, or degree in a foreign country constituting a recognized qualification for the practice of public accounting in ~~such that~~ country. A person ~~so registered~~ whose credentials are recognized ~~shall~~ may use only the title under which ~~he~~ the person is generally known in ~~his that~~ country, followed by the name of the country from which ~~he~~ the person received ~~his~~ the certificate, license, or degree.

(2) A person whose credentials are recognized by the board may practice public accounting under the terms and conditions established by the board."

**Section 9.** Section 37-50-335, MCA, is amended to read:

**"37-50-335. Registration of offices.** Each office established or maintained in this state for the practice of public accounting in this state by a certified public accountant, ~~or~~ by a partnership or corporation of certified public accountants, ~~or~~ by a licensed public accountant, ~~or~~ by a partnership or corporation of licensed public accountants, or by ~~one registered~~ a foreign accountant recognized under 37-50-313 ~~shall~~ must be registered annually with the department. A fee may not be charged for this registration. In addition, each individual engaged in this state in the practice of public accounting must have annually received a permit under 37-50-314."

**Section 10.** 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 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 under 37-51-310 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.*

**Section 11.** Section 37-60-303, MCA, is amended to read:

**“37-60-303. License qualifications.** (1) Except as otherwise specified in ~~this section~~ provided in subsection (8), an applicant for licensure under this chapter is subject to the provisions of this section and shall submit evidence under oath that the applicant:

- (a) is at least 18 years of age;
- (b) is a citizen of the United States;
- (c) has not been convicted in any jurisdiction of any felony or any crime involving moral turpitude or illegal use or possession of a dangerous weapon, for which a full pardon or similar relief has not been granted;
- (d) has not been judicially declared incompetent by reason of any mental defect or disease or, if so declared, has been fully restored;
- (e) is not suffering from habitual drunkenness or from narcotics addiction or dependence;
- (f) is of good moral character; and
- (g) has complied with other experience qualifications as may be set by the rules of the board.

(2) In addition to meeting the qualifications in subsection (1), an applicant for licensure as a private security guard shall:

- (a) complete the training requirements of a private security guard training program certified by the board and provide, on a form prescribed by the board, written notice of satisfactory completion of the training; and
- (b) fulfill other requirements as the board may by rule prescribe.

(3) In addition to meeting the qualifications in subsection (1), each applicant for a license to act as a private investigator shall submit evidence under oath that the applicant:

- (a) is at least 21 years of age;
- (b) has at least a high school education or its equivalent;
- (c) has not been dishonorably discharged from any branch of the United States military service;
- (d) for a period of not less than 3 years:
  - (i) has been lawfully engaged in the private investigative business;
  - (ii) has been lawfully employed as a private investigator or been the holder of a certificate of authority to conduct a private investigative business; or
  - (iii) has been an investigator, detective, special agent, or peace officer of a city, county, or state government or of the United States government; and
- (e) has fulfilled any other requirements as the board may by rule prescribe.

(4) Up to one-half of the experience required by subsection (3)(d) may be met by a combination of education and training as accepted by the board. All college credits must be from an accredited college or university and be verified by transcript.

(5) Applicants who will wear or carry firearms in performance of their duties shall submit written notice of satisfactory completion of a firearms training program certified by or satisfactory to the board, as it may by rule prescribe.

~~(6) A corporation applying for a license under this section must be incorporated under the laws of this state or be duly qualified to do business within this state.~~

~~(7)(6)~~ The board shall may require an applicant to demonstrate by written examination such additional qualifications as the board may by rule require.

(7) Except for an applicant subject to the provisions of subsection (8), the board shall require a background investigation of each applicant for licensure under this chapter that includes a fingerprint check by the Montana department of justice and the federal bureau of investigation.

(8) (a) A firm, company, association, partnership, limited liability company, corporation, or other entity that intends to engage in business governed by the provisions of this chapter must be incorporated under the laws of this state or qualified to do business within this state and must be licensed by the board.

(b) The board shall establish by rule the license application procedure and application fee for business entities described in subsection (8)(a).

(c) Individual employees, officers, directors, agents, or other representatives of an entity described in subsection (8)(a) who engage in duties that are subject to the provisions of this part must be licensed pursuant to the requirements of this part."

**Section 12.** Section 37-60-304, MCA, is amended to read:

**"37-60-304. Licenses — application form and content.** (1) Except as provided in 37-60-303(8), an application ~~Application~~ for a license shall must be made on a form prescribed by the board and accompanied by the application fee set by the board.

(2) An application shall must be made under oath and shall must include:

(a) the full name and address of the applicant;

(b) the name under which the applicant intends to do business;

(c) a statement as to the general nature of the business in which the applicant intends to engage;

(d) a statement as to whether the applicant desires to be licensed as a contract security company, a proprietary security organization, a private investigator, or a private security guard;

(e) ~~two~~ one recent ~~photographs~~ photograph of the applicant, of a type prescribed by the board, and two classifiable sets of ~~his~~ the applicant's fingerprints;

(f) a statement of ~~his~~ the applicant's age and experience qualifications; and

(g) such other information, evidence, statements, or documents as may be prescribed by the rules of the board; ~~and~~

~~(h) if the applicant is a person other than an individual, the full name and residence address of each of its partners, officers, and directors and its manager.~~

(3) The board shall verify the statements in the application and the applicant's moral character.

(4) *The submittal of fingerprints must be a prerequisite to the issuance of a license by means of fingerprint checks by the Montana department of justice and the federal bureau of investigation.*

(5) The board shall send written notification to the chief of police, ~~the~~ sheriff, and ~~the~~ county attorney in whose jurisdiction the principal office of the applicant is to be located that an application has been submitted.”

**Section 13. Repealer.** Sections 37-51-307 and 37-54-110, MCA, are repealed.

**Section 14. 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 15. Effective date.** [This act] is effective July 1, 2003.

Approved April 17, 2003

## CHAPTER NO. 376

[HB 104]

AN ACT REVISING THE QUALIFICATIONS FOR A VOLUNTARY PURCHASING POOL; DECREASING THE NUMBER OF REQUIRED EMPLOYEES FROM 1,000 TO 51; ELIMINATING THE OPTION OF USING RATING ARRANGEMENTS TO OFFER DISABILITY INSURANCE POLICIES, CERTIFICATES, OR CONTRACTS THROUGH A POOL THAT RATES EACH MEMBER EMPLOYER SEPARATELY; REQUIRING CONTRACTS OFFERED THROUGH A POOL TO RATE AN ENTIRE GROUP AS A WHOLE AND TO CHARGE EACH INSURED PERSON BASED ON A COMMUNITY RATE WITHIN THE COMMON GROUP AS PERMITTED BY LAWS GOVERNING GROUP DISABILITY INSURANCE; AND AMENDING SECTION 33-22-1815, MCA.

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

**Section 1.** 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 ~~1,000~~ 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 ~~more than 50~~ 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) ~~It has the option of using the following types of rating arrangements with the disability insurance policies, certificates, or contracts:~~

~~(i) Disability insurance policies, certificates, or contracts offered through the voluntary purchasing pool that rate each member employer separately are subject to the provisions of this part.~~

~~(ii) Disability insurance policies, certificates, or contracts offered through the voluntary purchasing pool that must rate the entire group as a whole must 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) Rates for voluntary purchasing pool groups must be set pursuant to the provisions of 33-22-1809.~~

~~(b)(c) At its discretion, premiums may be paid to the disability insurance policies, certificates, or contracts by the voluntary purchasing pool, by member employers, or by eligible employees and their dependents.~~

(7) A person marketing disability insurance policies, certificates, or contracts for a voluntary purchasing pool must be licensed as an insurance producer.”

Approved April 17, 2003

## CHAPTER NO. 377

[HB 110]

AN ACT ELIMINATING THE AMOUNT FOR WHICH AN INJURED WORKER IS LIABLE TO ALL MEDICAL SERVICE PROVIDERS, EXCEPT FOR A HOSPITAL EMERGENCY DEPARTMENT, FOR TREATMENT RELATED TO A COMPENSABLE INJURY OR OCCUPATIONAL DISEASE AFTER THE INITIAL VISIT; PROVIDING THAT A WORKER IS NOT RESPONSIBLE FOR THE COST OF A SUBSEQUENT VISIT TO AN EMERGENCY DEPARTMENT FOR TREATMENT REQUESTED BY AN INSURER; AMENDING SECTION 39-71-704, 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 39-71-704, MCA, is amended to read:

**“39-71-704. Payment of medical, hospital, and related services — fee schedules and hospital rates — fee limitation.** (1) In addition to the compensation provided under this chapter and as an additional benefit separate and apart from compensation benefits actually provided, the following must be furnished:

(a) After the happening of a compensable injury and subject to other provisions of this chapter, the insurer shall furnish reasonable primary medical services for conditions resulting from the injury for those periods as the nature of the injury or the process of recovery requires.

(b) The insurer shall furnish secondary medical services only upon a clear demonstration of cost-effectiveness of the services in returning the injured worker to actual employment.

(c) The insurer shall replace or repair prescription eyeglasses, prescription contact lenses, prescription hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in 39-71-119, arising out of and in the course of employment.

(d) (i) The insurer shall reimburse a worker for reasonable travel, lodging, meals, and miscellaneous expenses incurred in travel to a medical provider for treatment of an injury pursuant to rules adopted by the department. Reimbursement must be at the rates allowed for reimbursement for state employees.

(ii) Rules adopted under subsection (1)(d)(i) must provide for submission of claims, within 90 days from the date of travel, following notification to the claimant of reimbursement rules, must provide procedures for reimbursement receipts, and must require the use of the least costly form of travel unless the travel is not suitable for the worker's medical condition. The rules must exclude from reimbursement:

(A) 100 miles of automobile travel for each calendar month unless the travel is requested or required by the insurer pursuant to 39-71-605;

(B) travel to a medical provider within the community in which the worker resides;

(C) travel outside the community in which the worker resides if comparable medical treatment is available within the community in which the worker resides, unless the travel is requested by the insurer; and

(D) travel for unauthorized treatment or disallowed procedures.

(iii) An insurer is not liable for injuries or conditions that result from an accident that occurs during travel or treatment, except that the insurer retains liability for the compensable injuries and conditions for which the travel and treatment was required.

(e) Except for the repair or replacement of a prosthesis furnished as a result of an industrial injury, the benefits provided for in this section terminate when they are not used for a period of 60 consecutive months.

(f) Notwithstanding subsection (1)(a), the insurer may not be required to furnish, after the worker has achieved medical stability, palliative or maintenance care except:

(i) when provided to a worker who has been determined to be permanently totally disabled and for whom it is medically necessary to monitor administration of prescription medication to maintain the worker in a medically stationary condition;

(ii) when necessary to monitor the status of a prosthetic device; or

(iii) when the worker's treating physician believes that the care that would otherwise not be compensable under subsection (1)(f) is appropriate to enable the worker to continue current employment or that there is a clear probability of returning the worker to employment. A dispute regarding the compensability of palliative or maintenance care is considered a dispute over which, after mediation pursuant to department rule, the workers' compensation court has jurisdiction.

(g) Notwithstanding any other provisions of this chapter, the department, by rule and upon the advice of the professional licensing boards of practitioners affected by the rule, may exclude from compensability any medical treatment

that the department finds to be unscientific, unproved, outmoded, or experimental.

(2) The department shall annually establish a schedule of fees for medical services not provided at a hospital that are necessary for the treatment of injured workers. Charges submitted by providers must be the usual and customary charges for nonworkers' compensation patients. The department may require insurers to submit information to be used in establishing the schedule.

(3) (a) The department shall establish rates for hospital services necessary for the treatment of injured workers.

(b) Except as provided in subsection (3)(g), rates for services provided at a hospital must be the greater of:

(i) 69% of the hospital's January 1, 1997, usual and customary charges; or

(ii) the discount factor established by the department that was in effect on June 30, 1997, for the hospital. The discount factor for a hospital formed by the merger of two or more existing hospitals is computed by using the weighted average of the discount factors in effect at the time of the merger.

(c) Except as provided in subsection (3)(g), the department shall adjust hospital discount factors so that the rate of payment does not exceed the annual percentage increase in the state's average weekly wage, as defined in 39-71-116.

(d) The department may establish a fee schedule for hospital outpatient services rendered. The fee schedule must, in the aggregate, provide for fees that are equal to the statewide average discount factors paid to hospitals to provide the same or equivalent procedure to workers' compensation hospital outpatients.

(e) The discount factors established by the department pursuant to this subsection (3) may not be less than medicaid reimbursement rates.

(f) For services available in Montana, insurers are not required to pay facilities located outside Montana rates that are greater than those allowed for services delivered in Montana.

(g) For a hospital licensed as a medical assistance facility or a critical access hospital pursuant to Title 50, chapter 5, the rate for services is the hospital's usual and customary charge. Fees paid to a hospital licensed as a medical assistance facility are not subject to the limitation provided in subsection (4).

(4) The percentage increase in medical costs payable under this chapter may not exceed the annual percentage increase in the state's average weekly wage, as defined in 39-71-116.

(5) Payment pursuant to reimbursement agreements between managed care organizations or preferred provider organizations and insurers is not bound by the provisions of this section.

(6) Disputes between an insurer and a medical service provider regarding the amount of a fee for medical services must be resolved by a hearing before the department upon written application of a party to the dispute.

~~(7) (a) After the initial visit, the worker is responsible for 20%, but not to exceed \$10, of the cost of each subsequent visit to a medical service provider for treatment relating to a compensable injury or occupational disease, unless the visit is to a medical service provider in a managed care organization as~~

~~requested by the insurer or is a visit to a preferred provider as requested by the insurer.~~

~~(b)(7) (a)~~ After the initial visit, the worker is responsible for \$25 of the cost of each subsequent visit to a hospital emergency department for treatment relating to a compensable injury or occupational disease.

~~(e)(b)~~ "Visit", as used in ~~subsections (7)(a) and (7)(b)~~ *this subsection (7)*, means each time that the worker obtains services relating to a compensable injury or occupational disease from:

- (i) a treating physician;
- (ii) a physical therapist;
- (iii) a psychologist; or
- (iv) hospital outpatient services available in a nonhospital setting.

~~(d) A worker is not responsible for the cost of a subsequent visit pursuant to subsection (7)(a) if the visit is an examination requested by an insurer pursuant to 30-71-605.~~

*(c) A worker is not responsible for the cost of a subsequent visit pursuant to subsection (7)(a) if the visit is for treatment requested by an insurer."*

**Section 2. Effective date — applicability.** [This act] is effective on passage and approval and applies to claims for treatment filed on or after [the effective date of this act].

Approved April 17, 2003

## CHAPTER NO. 378

[HB 130]

AN ACT REVISING THE PROMPT PAY PROVISIONS FOR INSURERS; MODIFYING THE DEFINITION OF "PROOF OF LOSS"; DEFINING "CLAIM DOCUMENTATION"; REVISING THE TIME PERIOD FOR PAYMENT OF CLAIMS BY AN INSURER; REQUIRING PROMPT PAYMENT OF MOTOR VEHICLE DAMAGE CLAIMS; REVISING THE ADMINISTRATIVE PENALTY PROVISIONS FOR FAILURE OF AN INSURER TO PROMPTLY PAY CLAIMS; PROVIDING THAT COMPLIANCE OR NONCOMPLIANCE WITH PROMPT PAYMENT REQUIREMENTS MAY NOT BE USED AS A BASIS FOR PRIVATE CAUSE OF ACTION OR ADMISSIBLE AS EVIDENCE IN A PRIVATE ACTION; AND AMENDING SECTIONS 33-18-231, 33-18-232, AND 33-18-233, MCA.

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

**Section 1.** Section 33-18-231, MCA, is amended to read:

**"33-18-231. State administrative process to provide timely payment of medical benefits — definitions.** In 33-18-231 through 33-18-235 the following definitions apply:

(1) "Claim documentation" means standard claims forms or other documentation routinely accepted by insurers as proof of loss.

~~(1)(2) "Insurer" means any insurer as that term is defined by this title, including any fraternal benefit society, hospital service nonprofit corporation, health service corporation, nonprofit medical service corporation, nonprofit~~

~~health care corporation, health maintenance organization, self insurer, or third party administrator or any other public or private, profit or nonprofit, governmental or nongovernmental individual, group, or organization that sells or offers for sale insurance policies, subscriber contracts, certificates, or agreements by which the offerer promises to pay medical benefits in any form in this state any insurer as that term is defined by this title, including any fraternal benefit society, hospital service nonprofit corporation, health service corporation, nonprofit medical service corporation, nonprofit health care corporation, health maintenance organization, self-insurer, or third-party administrator or any other public or private, profit or nonprofit, governmental or nongovernmental individual, group, or organization that sells or offers for sale insurance policies, subscriber contracts, certificates, or agreements by which the offerer promises to pay medical benefits in any form in this state.~~

~~(2)(3) "Proof of loss" means any document accepted claim documentation received by an insurer upon which payment of benefits claims is made requested."~~

**Section 2.** Section 33-18-232, MCA, is amended to read:

**"33-18-232. Time for payment of claims.** (1) ~~If An insurer shall pay or deny a claim within 30 days after receipt of a proof of loss, the insurer has not paid the claim for benefits provided in the policy or contract or notified the insured or the insured's assignee of the reasons for failure to pay the claim in full and has not requested additional information or documents, the insured or the assignee may report the delay to the commissioner, who may then investigate to determine if the insurer has failed to pay the claim within 30 days of its receipt without good reason and, if so, whether such delay is a general course of business practice of the insurer unless the insurer makes a reasonable request for additional information or documents in order to evaluate the claim. If an insurer makes a reasonable request for additional information or documents, the insurer shall pay or deny the claim within 60 days of receiving the proof of loss unless the insurer has notified the insured, the insured's assignee, or the claimant of the reasons for failure to pay the claim in full or unless the insurer has a reasonable belief that insurance fraud has been committed and the insurer has reported the possible insurance fraud to the commissioner. This section does not eliminate an insurer's right to conduct a thorough investigation of all the facts necessary to determine payment of a claim.~~

~~(2) Upon the commissioner's determination that the delay is a general course of business practice and for a year thereafter unless earlier rescinded by the commissioner, all claims for benefits not paid by that insurer within 30 working days after receipt by the insurer, without good reason as determined by the commissioner, shall obligate the insurer to pay interest at 18% a year from the date the commissioner determines that the delay became unreasonable. If an insurer fails to comply with this section and the insurer is liable for payment of the claim, the insurer shall pay an amount equal to the amount of the claim due plus 10% annual interest calculated from the date on which the claim was due. For purposes of calculating the amount of interest, a claim is considered due 30 days after the insurer's receipt of the proof of loss or 60 days after receipt of the proof of loss if the insurer made a reasonable request for information or documents. Interest payments must be made to the person who receives the claims payment.~~

~~(3) A private cause of action under 33-18-201 or 33-18-242 may not be based on the compliance or noncompliance with the requirements of this section and~~

evidence of compliance or noncompliance with this section is not admissible in any private action based on 33-18-201 or 33-18-242.”

**Section 3.** Section 33-18-233, MCA, is amended to read:

**“33-18-233. Administrative penalty for failure to pay promptly.** (1) The commissioner may, after a hearing, impose an administrative fine as set forth in subsection (2) provided in 33-1-317 on an insurer if he the commissioner finds that the insurer as a general course of business practice in this state fails to:

- (a) use due diligence in processing all claims;
- (b) pay claims in a timely manner;
- (c) provide proper notice, when required, with respect to the reasons for the insurer’s failure to make claim payments when due; ~~or~~
- (d) pay, without just cause, proper claims arising under coverage provided by its policies, whether such the claims are in favor of an insured, in favor of a third person with respect to the liability of an insured to such the third person, or in favor of any other person entitled to the benefits of a policy; or

(e) pay interest pursuant to 33-18-232(2).

~~(2) The administrative penalty imposed for violations of 33-18-231 through 33-18-235 may not exceed \$1,000 for each separate violation.~~

~~(3)(2) If an insurer can demonstrate that it has consistently paid 90% of the total dollar amount outstanding in claims to each claimant within 20 working days and all of the amount within 30 working days of receipt of claims during the 6-month period immediately preceding the hearing date, the insurer is not subject to the fine imposed under subsection (2) described in subsection (1).”~~

**Section 4. Prompt payment of motor vehicle damage claims.** (1) Except for providers who are prepaid or agree to a different payment schedule, an insurer shall make an offer to pay or shall pay all approved claims for covered services or damages that solely involve the recovery of property damages in an amount of \$2,500 or less arising out of the ownership, maintenance, or use of a motor vehicle within 30 working days of receipt of a proof of loss that is correctly completed and submitted to the insurer.

(2) Subsection (1) does not apply to an insurer who has notified the insured or the insured’s assignee of the reasons for the insurer’s failure to pay the claim in full or to an insurer that has made a reasonable request for additional information or documents.

**Section 5. Codification instruction.** [Section 4] is intended to be codified as an integral part of Title 33, chapter 18, and the provisions of Title 33, chapter 18, apply to [section 4].

Approved April 18, 2003

## CHAPTER NO. 379

[HB 141]

AN ACT REDEFINING THE CRIMINAL CONDUCT OF AND INCREASING THE PENALTIES FOR FLEEING FROM OR ELUDING A PEACE OFFICER; AND AMENDING SECTIONS 61-5-205, 61-8-301, 61-8-715, 61-9-402, AND 61-9-431, MCA.

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

**Section 1. Fleeing from or eluding peace officer.** (1) A person operating a motor vehicle commits the offense of fleeing from or eluding a peace officer if a uniformed peace officer operating a police vehicle in the lawful performance of the peace officer's duty gives the person a visual or audible signal by hand, voice, emergency light, or siren directing the person to stop the motor vehicle and the person knowingly fails to obey the signal by increasing the speed of the motor vehicle, continuing at a speed that is 10 or more miles an hour above the applicable speed limit, extinguishing the motor vehicle's lights, or otherwise fleeing from, eluding, or attempting to flee from or elude the peace officer.

(2) (a) Except as provided in subsection (2)(b), a person convicted of or pleading guilty or nolo contendere to an offense under subsection (1) shall be imprisoned for a term not to exceed 1 year or fined an amount not to exceed \$2,000, or both.

(b) A person convicted of an offense of fleeing from or eluding a peace officer during which the person causes serious bodily injury to or the death of any other person shall be imprisoned for a term not to exceed 10 years or fined an amount not to exceed \$10,000, or both.

**Section 2.** Section 61-5-205, MCA, is amended to read:

**"61-5-205. Mandatory revocation or suspension of license upon proper authority.** (1) The department upon proper authority shall revoke the driver's license or the operating privilege of a driver upon receiving a record of the driver's conviction of or forfeiture of bail not vacated for any of the following offenses, when the conviction or forfeiture has become final:

(a) negligent homicide resulting from the operation of a motor vehicle;

(b) driving a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs, except as provided in 61-5-208, or operation of a motor vehicle by a person with a blood alcohol concentration of 0.10 or more;

(c) any felony in the commission of which a motor vehicle is used;

(d) failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;

(e) perjury or the making of a false affidavit or statement under oath to the department under this chapter or under any other law relating to the ownership or operation of motor vehicles;

(f) conviction or forfeiture of bail not vacated upon three charges of reckless driving committed within a period of 12 months; ~~or~~

(g) *fleeing from or eluding a peace officer; or*

~~(h)~~ negligent vehicular assault as defined in 45-5-205 involving a motor vehicle.

(2) The department upon proper authority shall suspend the driver's license or the operating privilege of a driver upon receiving a record of the driver's conviction of or forfeiture of bail not vacated for a theft offense under 45-6-301 when the conviction or forfeiture has become final if the theft consisted of theft of motor vehicle fuel and a motor vehicle was used in the commission of the offense. The suspension must be for 30 days for a first offense, 6 months for a second offense, and 1 year for a third or subsequent offense."

**Section 3.** Section 61-8-301, MCA, is amended to read:

**“61-8-301. Reckless driving.** (1) A person commits the offense of reckless driving if the person:

(a) operates a vehicle in willful or wanton disregard for the safety of persons or property; or

~~(b) operates a vehicle in willful or wanton disregard for the safety of persons or property while fleeing or attempting to flee from or elude a peace officer who is lawfully in pursuit and whose vehicle is at the time in compliance with the requirements of 61-9-402; or~~

~~(c)~~(b) operates a vehicle in willful or wanton disregard for the safety of persons or property while passing, in either direction, a school bus that has stopped and is displaying the visual flashing red signal, as provided in 61-8-351 and 61-9-402. This subsection~~(4)~~(c) (1)(b) does not apply to situations described in 61-8-351(5).

(2) Each municipality in this state may enact and enforce 61-8-715 and subsection (1) of this section as an ordinance.

(3) A person who is convicted of the offense of reckless driving is subject to the penalties provided in 61-8-715.”

**Section 4.** Section 61-8-715, MCA, is amended to read:

**“61-8-715. Reckless driving — reckless endangerment of highway workers — penalty.** (1) Except as provided in subsection ~~(3)~~ (2), a person convicted of reckless driving under 61-8-301(1)(a) or ~~(1)(c)~~ (1)(b) or convicted of reckless endangerment of highway workers under 61-8-315 shall be punished upon a first conviction by imprisonment for a term of not more than 90 days, by a fine of not less than \$25 or more than \$300, or both. On a second or subsequent conviction, the person shall be punished by imprisonment for a term of not less than 10 days or more than 6 months, by a fine of not less than \$50 or more than \$500, or both.

~~(2) Except as provided in subsection (3), a person convicted of reckless driving under 61-8-301(1)(b) shall be punished by imprisonment in the county or city jail for a term of not less than 10 days or more than 6 months to which may be added, at the discretion of the court, a fine of not less than \$300 or more than \$500. On a second or subsequent conviction, the person shall be punished by imprisonment for a term of not less than 30 days or more than 1 year to which may be added, at the discretion of the court, a fine of not less than \$500 or more than \$1,000.~~

~~(3)~~(2) A person who is convicted of reckless driving under 61-8-301 and whose offense results in the death or serious bodily injury of another person shall be punished by a fine in an amount not exceeding \$10,000, by incarceration for a term not to exceed 1 year, or both. Section 61-8-351(6) does not apply to a prosecution under 61-8-301~~(4)~~(c)(1)(b) that is punishable under this subsection.”

**Section 5.** Section 61-9-402, MCA, is amended to read:

**“61-9-402. Audible and visual signals on police, emergency vehicles, and on-scene command vehicles — immunity.** (1) A police vehicle must be equipped with a siren capable of giving an audible signal and may be equipped with alternately flashing or rotating red or blue lights as specified in this section. The use of signal equipment as described in this section imposes upon the drivers of other vehicles the obligation to yield right-of-way or to stop and to proceed past the signal or light only with caution and at a speed that is no



greater than is reasonable and proper under the conditions existing at the point of operation.

(2) An authorized emergency vehicle must be equipped:

(a) with a siren and an alternately flashing or rotating red light as specified in this section; and

(b) with signal lamps mounted as high and as widely spaced laterally as practicable that are capable of displaying to the front two alternately flashing red lights located at the same level and to the rear two alternately flashing red lights located at the same level. These lights must have sufficient intensity to be visible at 500 feet in normal sunlight.

(3) A bus used for the transportation of school children must be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, displaying to the front two red and two amber alternating flashing lights and to the rear two red and two amber alternating flashing lights. These lights must have sufficient intensity to be visible at 500 feet in normal sunlight. The warning lights must be as prescribed by the board of public education and approved by the department.

(4) A police vehicle and an authorized emergency vehicle may, and an emergency service vehicle must, be equipped with alternately flashing or rotating amber lights as specified in this section.

(a) The use of signal equipment as described in this section imposes upon the drivers of other vehicles the obligation to yield right-of-way or to stop and to proceed past the signal or light only with caution and at a speed that is no greater than is reasonable and proper under the conditions existing at the point of operation subject to the provisions of 61-8-209 and 61-8-303.

(b) An employee, agent, or representative of the state or a political subdivision of the state or of a fire department who is operating a police vehicle, an authorized emergency vehicle, or an emergency service vehicle and using signal equipment in rendering assistance at a highway crash scene or in response to any other hazard on the roadway that presents an immediate hazard or an emergency or life-threatening situation is not liable, except for willful misconduct, bad faith, or gross negligence, for injuries, costs, damages, expenses, or other liabilities resulting from a motorist operating a vehicle in violation of subsection (4)(a).

(5) Blue, red, and amber lights required in this section must be mounted as high as and as widely spaced laterally as practicable and capable of displaying to the front two alternately flashing lights of the specified color located at the same level and to the rear two alternately flashing lights of the specified color located at the same level or one rotating light of the specified color, mounted as high as is practicable and visible from both the front and the rear. These lights must have sufficient intensity to be visible at 500 feet in normal sunlight. Except as provided in 61-9-204(6), only police vehicles as defined in 61-1-118 may display blue lights, lenses, or globes.

(6) A police car and authorized emergency vehicle may be equipped with a flashing signal lamp that is green in color, visible from 360 degrees, and attached to the exterior roof of the vehicle for purposes of designation as the on-scene command and control vehicle in an emergency or disaster. The green light must have sufficient intensity to be visible at 500 feet in normal sunlight. Only the on-scene command and control vehicle may display green lights, lenses, or globes.

(7) Only a police vehicle or an authorized emergency vehicle may be equipped with the means to flash or alternate its headlamps or its backup lights.

(8) A violation of 61-9-402(4)(a) is considered reckless endangerment of highway workers, as provided in 61-8-315, and is punishable as provided in 61-8-715~~(2)~~(1)."

**Section 6.** Section 61-9-431, MCA, is amended to read:

**"61-9-431. Use of warning signs, flares, reflectors, lanterns, flag persons.** (1) The operator of a commercial tow truck, in compliance with the requirements of 61-8-906 and 61-8-907, shall, when rendering assistance at a hazard on the highway that necessitates the obstruction of a portion or all of the roadway, place at least two warning signs as required in this section as soon as is practicable under the circumstances. Flag persons and cones may be used to augment the warning signs.

(2) Highway warning signs must be of a uniform type, with dimensions of 3 x 3 feet, lettering 5 inches high, and reflectorized orange background and black border, as prescribed by the department. The signs must be designed to be visible both day and night. The warning signs must bear the words "hazard ahead", "lane closed ahead", "road closed ahead", "wreck ahead", "tow truck ahead", or "wrecker ahead", as prescribed by the department.

(3) The operator of a commercial tow truck used for the purpose of rendering assistance at a hazard on the highway that necessitates the obstruction of a portion of the roadway shall place a highway warning sign as required in subsection (2):

(a) in an area in which the posted speed limit is 45 miles an hour or less, not less than 600 feet in advance of the hazard and an equal distance to the rear of the hazard; and

(b) in an area in which the posted speed limit is more than 45 miles an hour or no speed limit is posted, 1,000 feet in advance of the hazard, except on a divided highway where the hazard does not cause disruption of traffic traveling on the opposite side of the divided highway, and an equal distance to the rear of the hazard.

(4) A local government unit may adopt an ordinance exempting an operator of a commercial tow truck from the requirements of subsection (2) within the limits of an incorporated city or town.

(5) When a hazard exists on the highway during the hours of darkness, the operator of a commercial tow truck called to render assistance shall place warning signs upon the highway as prescribed in this section and shall also place at least one red flare, red lantern, or warning light or reflector in close proximity to each warning sign.

(6) A violation of warning signs placed as provided in subsection (3) is considered reckless endangerment of highway workers, as provided in 61-8-315, and is punishable as provided in 61-8-715~~(2)~~(1)."

**Section 7. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 61, chapter 8, part 3, and the provisions of Title 61 apply to [section 1].

Approved April 17, 2003

**CHAPTER NO. 380**

[HB 145]

AN ACT GENERALLY REVISING THE STATE INSURANCE CODE; ALLOWING INSURANCE COMPANIES TO USE BOOK-ENTRY SYSTEMS WITH RESPECT TO THEIR SECURITIES AND PROVIDING THE INSURANCE COMMISSIONER WITH RULEMAKING AUTHORITY; DEFINING "DISABILITY INCOME INSURANCE"; MODIFYING REQUIREMENTS AND PENALTIES FOR SURPLUS LINES PRODUCERS; PROVIDING THAT CERTAIN FEES AND PENALTIES BE DEPOSITED IN THE STATE SPECIAL REVENUE FUND TO THE CREDIT OF THE STATE AUDITOR RATHER THAN DEPOSITING THEM INTO THE GENERAL FUND; REVISING VARIOUS INCORPORATION REQUIREMENTS; CHANGING REPORTING REQUIREMENTS WITH RESPECT TO AN INDIVIDUAL OBTAINING 10 PERCENT OR MORE OF ANY CLASS OF EQUITY SECURITY IN A DOMESTIC STOCK INSURANCE COMPANY; REVISING THE DEFINITION OF "INSOLVENT INSURER"; CHANGING THE PENALTY FOR MISAPPROPRIATION OF INSURANCE PREMIUMS; MODIFYING INCONTESTABILITY PROVISIONS FOR DISABILITY BENEFITS AND CERTAIN DEATH BENEFITS; ALLOWING A GROUP INSURER TO CONTRACT WITH ANOTHER INSURER FOR CONVERSION POLICIES; MODIFYING COVERAGE FOR WELL-CHILD CARE; MODIFYING THE DEFINITION OF "THEFT" TO INCLUDE MISAPPROPRIATION OF INSURANCE PREMIUMS; AMENDING SECTIONS 33-1-408, 33-1-705, 33-1-1202, 33-2-115, 33-2-307, 33-2-326, 33-2-708, 33-3-201, 33-3-441, 33-4-101, 33-4-202, 33-10-102, 33-10-207, 33-16-403, 33-17-503, 33-17-511, 33-17-1102, 33-17-1204, 33-20-101, 33-20-103, 33-20-105, 33-20-114, 33-20-1202, 33-20-1203, 33-20-1204, 33-20-1205, 33-20-1206, 33-20-1207, 33-20-1209, 33-20-1210, 33-20-1213, 33-22-101, 33-22-107, 33-22-303, 33-22-512, 33-22-1512, 33-22-1513, 33-23-212, 33-30-102, 33-30-107, 33-30-204, 33-31-111, 33-31-212, 33-35-306, 45-6-301, AND 50-3-109, MCA; AND REPEALING SECTION 17-2-121, MCA.

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

**Section 1. Purpose.** The purpose of [sections 1 through 4] is to authorize domestic insurance companies to utilize modern systems for holding and transferring securities without physical delivery of securities certificates, subject to appropriate rules adopted by the commissioner.

**Section 2. Definitions.** As used in this chapter, the following definitions apply:

(1) "Clearing corporation" has the meaning provided in 30-8-112, except that with respect to securities issued by institutions organized or existing under the laws of any foreign country or securities used to meet the deposit requirements pursuant to the laws of a foreign country as a condition of doing business in the foreign country, a clearing corporation may include a corporation that is organized or existing under the laws of any foreign country and is legally qualified under those laws to effect transactions in securities by computerized book entry.

(2) "Direct participant" means a bank, trust company, or other institution that maintains an account in its name in a clearing corporation and through which an insurance company participates in a clearing corporation.

(3) "Federal reserve book-entry system" means the computerized systems sponsored by the United States department of the treasury and certain agencies and instrumentalities of the United States for holding and transferring securities of the United States government and those agencies and instrumentalities, respectively, in federal reserve banks through banks that are members of the federal reserve system or that otherwise have access to the computerized systems.

(4) "Member bank" means a national bank, state bank, or trust company that is a member of the federal reserve system and through which an insurance company participates in the federal reserve book-entry system.

(5) "Security" has the meaning provided in 30-8-112.

**Section 3. Use of book-entry systems — rules.** (1) (a) Other provisions of law may not be construed as prohibiting a domestic insurance company from depositing or arranging for the deposit of securities held in or purchased for its general account and its separate accounts in a clearing corporation or the federal reserve book-entry system.

(b) When securities are deposited with a clearing corporation, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of the clearing corporation with any other securities deposited with the clearing corporation by any person, regardless of the ownership of the securities. Certificates representing securities of small denominations may be merged into one or more certificates of larger denominations.

(c) The records of any member bank through which an insurance company holds securities in the federal reserve book-entry system and the records of any custodian bank through which an insurance company holds securities in a clearing corporation at all times must show that the securities are held for the insurance company and for which accounts of the insurance company.

(d) Ownership and other interests in securities subject to this subsection (1) may be transferred by bookkeeping entry on the books of a clearing corporation or in the federal reserve book-entry system without, in either case, physical delivery of certificates representing the securities.

(2) The commissioner may adopt rules that include but are not limited to rules governing the deposit by insurance companies of securities with clearing corporations and in the federal reserve book-entry system and rules pertaining to evidence that must be provided to the commissioner with respect to the recording of securities.

**Section 4. Deposit of securities by insurance companies.** (1) Securities qualified for deposit under [sections 1 through 4] may be deposited with a clearing corporation or held in the federal reserve book-entry system. Securities deposited with a clearing corporation or held in the federal reserve book-entry system may not be withdrawn by the insurance company without the approval of the commissioner.

(2) 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 5. Disability income insurance.** "Disability income insurance" means an individual or group policy of insurance that primarily provides payment to or for the benefit of the policyholder or certificate holder based, in whole or in part, upon lost wages or other earned income or business or financial losses as a result of an inability to work due to sickness, injury, or a combination of sickness and injury.

**Section 6.** Section 33-1-408, MCA, is amended to read:

**"33-1-408. Conduct of examinations — records — correction of accounts — appraisals.** (1) Upon determining that an examination should be conducted, the commissioner or the commissioner's designee shall issue an examination warrant appointing one or more examiners to perform the examination and instructing them as to the scope of the examination. In conducting the examination, ~~the~~ *an* examiner shall observe the guidelines and procedures set forth in the examiners' handbook adopted by the NAIC. The commissioner may also employ other guidelines or procedures as the commissioner considers appropriate.

(2) Every company or person from whom information is sought and its officers, directors, employees, and agents shall provide to the examiners appointed under subsection (1) timely, convenient, and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents, and any or all computer or other recordings relating to the property, assets, business, and affairs of the company being examined. The officers, directors, employees, and agents of the company or person shall facilitate the examination and aid in the examination so far as it is in their power to do so. The refusal of any company, by its officers, directors, employees, or agents, to submit to examination or to comply with any reasonable written request of the examiners is grounds for suspension, refusal, or nonrenewal of any license or authority held by the company to engage in an insurance or other business subject to the commissioner's jurisdiction. A proceeding for suspension, revocation, or refusal of any license or authority must be conducted pursuant to 33-1-318 and 33-1-701.

(3) The commissioner or any examiner has the power to issue subpoenas, administer oaths, and examine under oath any person concerning any matter pertinent to the examination. Upon the failure or refusal of a person to obey a subpoena, the commissioner may petition a court of competent jurisdiction and, upon proper showing, the court may enter an order compelling the witness to appear and testify or to produce documentary evidence. Failure to obey the court order is punishable as contempt of court.

(4) When making an examination under this part, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners. The cost of retaining the personnel must be borne by the company that is the subject of the examination.

(5) This part may not be construed to limit the commissioner's authority to terminate or suspend any examination in order to pursue other legal or regulatory action pursuant to this title. Findings of fact and conclusions made pursuant to an examination are prima facie evidence in any legal or regulatory action.

(6) This part may not be construed to limit the commissioner's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or company workpapers or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action that the commissioner may consider appropriate."

**Section 7.** Section 33-1-705, MCA, is amended to read:

**"33-1-705. Rehearing.** Upon written request of a party to a hearing filed with the commissioner within 30 days after any order made pursuant to ~~a~~ *the* hearing has been mailed or delivered to the persons entitled to receive the ~~same~~ order, the commissioner may, ~~in his discretion,~~ grant a rehearing or reargument of the matters involved in ~~such~~ *the* hearing. ~~Notice of such rehearing or reargument shall be given as provided in 33-1-703."~~

**Section 8.** Section 33-1-1202, MCA, is amended to read:

**"33-1-1202. Insurance fraud.** A person commits the act of insurance fraud when the person:

(1) for the purpose of obtaining any money or benefit, presents or causes to be presented to any insurer, purported insurer, ~~broker producer,~~ or ~~agent administrator,~~ as defined in 33-17-102, any written or oral statement, including computer-generated documents, containing false, incomplete, or misleading information concerning any fact or thing material to, as part of, or in support of a claim for payment or other benefit pursuant to an insurance policy;

(2) assists, abets, solicits, or conspires with another to prepare or make any written or oral statement containing false, incomplete, or misleading information concerning any fact that is intended to be presented to any insurer or purported insurer or in connection with, material to, or in support of any claim for payment or other benefit pursuant to an insurance policy or contract;

(3) presents or causes to be presented to or by an insurer, purported insurer, ~~broker producer,~~ or ~~agent administrator,~~ as defined in 33-17-102, a materially false or altered application of insurance;

(4) accepts premium money knowing that coverage will not be provided;

(5) as a health care provider, submits a false or altered bill or report of physical condition to an insurer; or

(6) offers or accepts a direct or indirect inducement to file a false statement of claim with the intent of deceiving an insurer."

**Section 9.** Section 33-2-115, MCA, is amended to read:

**"33-2-115. Application for certificate of authority.** To apply for an original certificate of authority, an insurer shall file with the commissioner its application ~~therefor~~ accompanied by the applicable fees as specified in 33-2-708, showing its name, location of its home office or principal office in the United States, if an alien insurer, kinds of insurance to be transacted, date of organization or incorporation, form of organization, state or country of domicile, and ~~such~~ any additional information ~~as~~ *that* the commissioner may reasonably require. ~~together with~~ *The application must be accompanied by* the following documents, as applicable:

(1) if a foreign insurer, a copy of its corporate charter or articles of incorporation, with all amendments ~~thereto~~, certified by the public officer with whom the originals are on file in the state or country of domicile;

(2) if a mutual insurer, a copy of its bylaws as amended, certified by its secretary or other officer having custody thereof ~~of the bylaws~~;

(3) if a reciprocal insurer, copies of the power of attorney of its attorney-in-fact and of its subscribers' agreement, if any, certified by its attorney-in-fact;

(4) a copy of its financial statement as of *the preceding* December 31 ~~next preceding~~, sworn to by at least two executive officers of the insurer or certified by the public insurance supervisory official of the insurer's state of domicile or of entry into the United States;

(5) a copy of report of last examination, if any, made of the insurer, certified by the insurance supervisory official of its state of domicile or of entry into the United States;

(6) appointment of the commissioner pursuant to 33-1-601, as its attorney to receive service of legal process;

(7) if a foreign or alien insurer, a certificate of the public official having supervision of insurance in its state or country of domicile or state of entry into the United States, showing that it is authorized to transact the kinds of insurance proposed to be transacted in this state;

(8) if an alien insurer, a copy of the appointment and authority of its United States manager, certified by its officer having custody of its records;

(9) if a foreign insurer, certificate as to deposit if to be tendered pursuant to 33-2-111;

(10) *if a domestic insurer*, specimen copies of policies proposed to be offered in this state, together with premiums or premium rates applicable, or a declaration that ~~such~~ *the* rates as applicable will be those promulgated by designated rating organizations authorized to file ~~such~~ *the* rates in this state on behalf of the insurer."

**Section 10.** Section 33-2-307, MCA, is amended to read:

**"33-2-307. Requirements for eligible surplus lines insurers.** (1) A surplus lines insurance producer may not place insurance with an unauthorized insurer unless, at the time of placement, the unauthorized insurer:

(a) has established satisfactory evidence of good reputation and financial integrity; and

(b) is qualified under one of the following subsections:

(i) the insurer maintains capital and surplus or its equivalent under the laws of its state of domicile, which equals the greater of:

(A) the minimum capital and surplus requirements of 33-2-109 and 33-2-110; or

(B) ~~\$10~~ \$15 million. An insurer possessing less than ~~\$10~~ \$15 million capital and surplus may satisfy the requirements of this subsection upon an affirmative finding of acceptability by the commissioner. The commissioner's finding must be based upon factors of the quality of management, capital, and surplus of a parent company; company underwriting profit and investment income trends; and company record and reputation within the industry. The commissioner may not make an affirmative finding of acceptability when the surplus lines insurer's capital and surplus is less than \$7 million.

(ii) in the case of Lloyd's or another similar group including incorporated and unincorporated alien insurers, the insurer maintains a trust fund of not less than \$50 million as security to the full amount of capital and surplus for all policyholders and creditors in the United States of each member of the group. The incorporated members of the group may not engage in any business other than underwriting as a member of the group and are subject to the same level of solvency regulation and control by the groups of domiciliary regulators as are the unincorporated members. The trust must comply with the terms and conditions established in subsection (1)(b)(iv) for alien insurers.

(iii) in the case of an insurance exchange created by the laws of individual states, the insurer maintains capital and surplus, or their substantial equivalent, of not less than \$15 million in the aggregate. For an insurance exchange that maintains funds for the protection of each insurance exchange policyholder, each individual syndicate shall maintain minimum capital and surplus, or their substantial equivalent, of not less than \$1.5 million. If the insurance exchange does not maintain funds for the protection of each insurance exchange policyholder, each individual syndicate shall meet the minimum capital and surplus requirements of subsection (1)(b)(i).

(iv) in the case of an alien insurer, the insurer maintains in the United States an irrevocable trust fund in either a national bank or a member of the federal reserve system, in an amount not less than \$1.5 million, for the protection of all its policyholders in the United States and the trust fund consists of cash, securities, or letters of credit or of investments of substantially the same character and quality as those that are eligible investments for the capital and statutory reserves of insurers authorized to write like kinds of insurance in this state. The trust fund, which must be included in any calculation of capital and surplus or its equivalent, must have an expiration date that may not at any time be less than 5 years. In addition, the alien insurer must appear on the national association of insurance commissioners' Non-Admitted Insurers Quarterly Listing.

(c) has provided the commissioner a copy of its current annual statement, certified by the insurer not more than 6 months after the close of the period reported upon, or quarterly if considered necessary by the commissioner, and that is either:

(i) filed with and approved by the regulatory authority in the state of domicile of the unauthorized insurer; or

(ii) certified by an accounting or auditing firm licensed in the jurisdiction of the insurer's state of domicile.

(2) In the case of an insurance exchange, the statement required by subsection (1)(c) may be an aggregate combined statement of all underwriting syndicates operating during the period reported.

(3) In addition to meeting the requirements in subsection (1), an insurer is an eligible surplus lines insurer only if it appears on the most recent list of eligible surplus lines insurers published at least semiannually by the commissioner. This subsection does not require the commissioner to place or maintain the name of any unauthorized insurer on the list of eligible surplus lines insurers. An action may not lie against the commissioner or an employee of the commissioner for anything said in issuing the list of eligible surplus lines insurers referred to in this subsection.



(4) (a) The commissioner may declare an eligible surplus lines insurer ineligible if at any time the commissioner has reason to believe that it:

- (i) is in unsound financial condition;
- (ii) is no longer eligible under subsections (1) through (3);
- (iii) has willfully violated the laws of this state; or
- (iv) does not make reasonably prompt payment of just losses and claims in this state or elsewhere.

(b) The commissioner shall promptly mail notice of all declarations to each surplus lines insurance producer.

(5) As used in this section, the following definitions apply:

(a) "Capital", as used in the financial requirements of this section, means funds invested in for stocks or other evidences of ownership.

(b) "Surplus", as used in the financial requirements of this section, means funds over and above liabilities and capital of the insurer for the protection of policyholders."

**Section 11.** Section 33-2-326, MCA, is amended to read:

**"33-2-326. Penalties.** A surplus lines insurance producer who in this state represents or aids an unauthorized insurer in violation of this part is ~~guilty of a misdemeanor and shall be fined not more than \$1,000 or be imprisoned in the county jail for a term no longer than 6 months, or both subject to the penalties and procedures in 33-1-317 and 33-1-318.~~

**Section 12.** Section 33-2-708, MCA, is amended to read:

**"33-2-708. Fees and licenses.** (1) (a) Except as provided in 33-17-212(2), the commissioner shall collect a fee of \$1,900 from each insurer applying for or annually renewing a certificate of authority to conduct the business of insurance in Montana.

(b) The commissioner shall collect certain additional fees as follows:

(i) nonresident insurance producer's license:

(A) application for original license, including issuance of license, if issued, .....~~100.00~~ \$100;

(B) annual renewal of license, .....~~10.00~~ \$10;

(ii) surplus lines insurance producer license:

(A) application for original license and for issuance of license, if issued, .....~~50.00~~ \$50;

(B) annual renewal of license, .....~~50.00~~ \$50;

(iii) 50 cents for each page for copies of documents on file in the commissioner's office.

(2) (a) The commissioner shall charge a fee of \$75 for each course or program submitted for review as required by 33-17-1204 and 33-17-1205, but may not charge more than \$1,500 to a sponsoring organization submitting courses or programs for review in any biennium.

(b) Insurers and associations composed of members of the insurance industry are exempt from the charge in subsection (2)(a).

(3) The commissioner shall promptly deposit with the state treasurer to the credit of the general fund all fines and penalties and those amounts received

pursuant to 33-2-311, 33-2-705, ~~and 33-28-201,~~ and 50-3-109. All other fees collected by the commissioner pursuant to Title 33 and the rules adopted under Title 33 must be deposited in the state special revenue fund to the credit of the state auditor's office.

(4) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of \$10 will be refunded."

**Section 13.** Section 33-3-201, MCA, is amended to read:

**"33-3-201. Incorporation.** (1) This section applies to stock and mutual insurers ~~hereafter~~ incorporated in this state.

(2) Five or more individuals, none of whom are less than 18 years of age, may incorporate a stock insurer. Ten or more of ~~such~~ individuals, *none of whom are less than 18 years of age*, may incorporate a mutual insurer. At least a majority of the incorporators ~~shall must~~ be citizens of the United States. At least a majority of the incorporators ~~shall must~~ be residents of this state.

(3) The incorporators shall execute articles of incorporation in ~~quadruplicate~~ triplicate and acknowledge their execution thereof in the same manner as provided by law for the acknowledgment of deeds. The articles of incorporation ~~shall must~~ state the purpose for which the corporation is formed and ~~shall must~~ show:

(a) the name of the corporation. If a mutual *corporation*, the word "mutual" must be a part of the name. An alternative name or names may be specified for use in jurisdictions ~~wherein where~~ a conflict of name with that of another insurer or organization might otherwise prevent the corporation from being authorized to transact insurance ~~therein in that jurisdiction~~.

(b) the duration of its existence, which may be perpetual;

(c) the kinds of insurance, as defined in this code, which the corporation is formed to transact;

(d) if a stock corporation, its authorized capital stock, the number of shares of common stock ~~into which divided,~~ and the par value of each ~~such~~ share, ~~which~~ The par value ~~shall must~~ be at least \$1. Shares without par value or other than one class of voting common stock ~~shall are not~~ be authorized. The articles of incorporation may limit or deny present or future stockholders preemptive or preferential rights to acquire additional issues of the stock, ~~or~~ bonds, debentures, or other obligations convertible into stock, of the corporation, subject to the laws of Montana fixing the required representation and proportion of outstanding capital stock required to be represented and voted, for specified action, at any and all corporate meetings, elections, votes, or consent proceedings.

(e) if a stock corporation, the extent, if any, to which shares of its stock are subject to assessment;

(f) if a stock corporation, the number of shares subscribed, if any, by each incorporator;

(g) if a mutual corporation, the maximum contingent liability of its members, other than as to nonassessable policies, for payment of losses and expenses incurred. ~~Such~~ Any liability ~~shall must~~ be stated in the articles of incorporation but ~~shall may~~ not be less than one or more than six times the premium for the member's policy at the annual premium rate for a term of 1 year.

(h) the minimum, not less than 5, and the maximum, not more than 21, number of directors who ~~shall~~ constitute the board of directors and conduct the affairs of the corporation; ~~also, and~~ the names, addresses, and terms of the members of the initial board of directors. The term of office of initial directors ~~shall may not~~ be for ~~not~~ more than 1 year after the date of incorporation.

(i) the name of the county, and the city, town, or place within the county, in which its principal office or principal place of business is to be located in this state;

(j) ~~such~~ any other provisions, not inconsistent with law, ~~deemed considered~~ appropriate by the incorporators;

(k) the name and residence address of each incorporator and the citizenship of each incorporator who is not a citizen of the United States.”

**Section 14.** Section 33-3-441, MCA, is amended to read:

**“33-3-441. Equity securities of domestic stock insurance company — statement of ownership.** (1) When used in 33-3-441 through 33-3-447, the term “equity security” means:

(a) any stock or similar security;

(b) any security convertible, with or without consideration, into ~~such a~~ an equity security or carrying any warrant or right to subscribe to or purchase ~~such a~~ an equity security;

(c) any ~~such~~ warrant or right *described in subsection (1)(b); or*

(d) any other security ~~which that~~ the commissioner ~~shall deem~~ considers to be of a similar nature and ~~consider~~ considers necessary or appropriate, by ~~such~~ rules as ~~he the commissioner~~ may prescribe in the public interest or for the protection of investors, to treat as an equity security.

(2) ~~Every person who is directly or indirectly the beneficial owner of more than 10% of any class of any equity security of a domestic stock insurance company or who is a director or an officer of such company shall file with the commissioner, within 10 days after he becomes such beneficial owner, director, or officer, a statement, in such form as the commissioner may prescribe, of the amount of all equity securities of such company of which he is the beneficial owner, and within 10 days after the close of each calendar month thereafter. A domestic stock insurance company shall report to the commissioner the name of any person who acquires 10% or more of any class of equity security of the company. The company shall report the name of the person within 30 days of the person's acquiring 10% or more of any class of equity security of the company. The company shall provide any other information about the person that the commissioner may require.~~

(3) ~~If there has been a change in such ownership during such month, such person shall file with the commissioner a statement, in such form as the commissioner may prescribe, indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during such calendar month. If a person has not acquired at least a 10% interest of any class of equity security of a domestic stock insurance company during the last calendar year preceding the annual statement filing date, the company is only required to report in the annual statement the names and percentages of those persons holding at least 10% interest in any class of equity security.”~~

**Section 15.** Section 33-4-101, MCA, is amended to read:

**“33-4-101. Scope of chapter — provisions applicable.** (1) The chapter applies to:

(a) all domestic mutual hail, fire, and other casualty insurers of farm property and stock and rural buildings formed and immediately prior to January 1, 1961, lawfully transacting insurance under sections 40-1501 through 40-1517 of the Revised Codes of Montana, 1947;

(b) all domestic mutual rural insurers formed and immediately prior to January 1, 1961, lawfully transacting insurance under sections 40-1601 through 40-1625 of the Revised Codes of Montana, 1947;

(c) all insurers formed under this chapter.

(2) The insurance laws of this state do not apply to or govern, either directly or indirectly, domestic farm mutual insurers except as provided in this chapter.

(3) The following chapters and sections of this title apply to farm mutual insurers to the extent applicable and not inconsistent with the express provisions of this chapter and the reasonable implications of the express provisions of this chapter: chapter 1, parts 1 through 4, 7, 12, and 13; 33-2-112; 33-2-501; 33-2-502; 33-2-532 through 33-2-535; 33-2-708; 33-2-1212; chapter 2, parts 13 and 16; 33-2-1501; 33-2-1517(2); 33-3-218; 33-3-308; 33-3-309; 33-3-401; 33-3-402; 33-3-431; 33-3-436; and ~~chapter~~ *chapters 18 and 19.*”

**Section 16.** Section 33-4-202, MCA, is amended to read:

**“33-4-202. Declaration of intention to incorporate — articles of incorporation — fee.** (1) The individuals proposing to form a farm mutual insurer as referred to in 33-4-201 shall file with the commissioner:

(a) a declaration of their intention to form the corporation signed by at least 100 incorporators if a proposed state mutual insurer or by at least 25 incorporators if a proposed county mutual insurer; and

(b) ~~four~~ *three* copies of proposed articles of incorporation executed by three or more of the incorporators. The signatures of the incorporators must be notarized.

(2) The articles of incorporation must state:

(a) the name of the corporation. If a state mutual insurer, the words “farm mutual” must be a part of the name; if a county mutual insurer, the name must contain the words “farm mutual” or “rural mutual” together with the name of the county in which its principal place of business is to be located. The name may not be so similar to one already used by a corporation in this state as to be misleading.

(b) if a county mutual insurer, the name of the county or counties in which the corporation is to transact insurance and the address where its principal business office will be located;

(c) if a state mutual insurer, the location of its principal business office, which must be located in this state;

(d) the objects and purposes for which the corporation is formed;

(e) whether the insurer intends to transact business on the cash premium plan or the assessment plan;

(f) the duration of the corporation’s existence, which may be perpetual;

(g) the number of its directors, which may not be less than 5 or more than 11, and the names and addresses of the members of the initial board of directors

appointed to manage the affairs of the corporation until the first annual meeting of the members at which time successors ~~are~~ *must be* elected and qualified;

(h) other provisions, not inconsistent with law, considered appropriate by the incorporators;

(i) the names, residences, and addresses of the incorporators and the value of their property to be insured in the county or counties where the operations of the corporation are to be transacted.

(3) At the time of filing of the articles of incorporation as provided in subsection (1), the incorporators shall pay to the commissioner a filing fee of \$10. The commissioner shall deposit the fees with the state treasurer to the credit of the general fund."

**Section 17.** Section 33-10-102, MCA, is amended to read:

**"33-10-102. Definitions.** As used in this part, the following definitions apply:

(1) "Association" means the Montana insurance guaranty association created under 33-10-103.

(2) (a) "Covered claim" means an unpaid claim, including one for unearned premiums, that arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this part applies issued by an insurer, if the insurer becomes an insolvent insurer after July 1, 1971, and:

(i) the claimant or insured is a resident of this state at the time of the insured event; or

(ii) the property from which the claim arises is permanently located in this state.

(b) Covered claim does not include any amount:

(i) awarded as punitive or exemplary damages;

(ii) sought as a return of premium under a retrospective rating plan; or

(iii) due a reinsurer, insurer, insurance pool, or underwriting association as subrogation recoveries, reinsurance recoveries, contribution, or indemnification. A reinsurer, insurer, insurance pool, or underwriting association may not assert a claim for any amount against the insured of the insolvent insurer other than to the extent that the claim exceeds the policy limits of the insolvent insurer's policy.

(3) "Insolvent insurer" means an insurer:

(a) authorized to transact insurance in this state either at the time the policy was issued or when the insured event occurred; and

(b) ~~determined to be insolvent by a court of competent jurisdiction against whom an order of liquidation has been entered with a finding of insolvency by a court of competent jurisdiction in the insurer's state of domicile.~~

(4) "Member insurer" means a person who:

(a) writes any kind of insurance to which this part applies under 33-10-101(3), including the exchange of reciprocal or interinsurance contracts; and

(b) is licensed to transact insurance in this state.

(5) (a) "Net direct written premiums" means direct gross premiums written in this state on insurance policies to which this part applies, less return

premiums on the policies and dividends paid or credited to policyholders of policies to which this part applies.

(b) Net direct written premiums does not include premiums on contracts between insurers or reinsurers.

(6) "Person" means any individual, corporation, partnership, association, or voluntary organization."

**Section 18.** Section 33-10-207, MCA, is amended to read:

**"33-10-207. Immunity.** There shall be no ~~is not any~~ liability on the part of and no cause of action of any nature shall arise ~~may not be brought~~ against any member insurer or its insurance producers agents or employees, the association or its insurance producers or employees, members of the board of directors, or the commissioner or his the commissioner's representatives for any action taken by them in the performance of their powers and duties under this part."

**Section 19.** Section 33-16-403, MCA, is amended to read:

**"33-16-403. Examination of application and investigation of applicant — issuance of license — fee.** (1) The commissioner shall examine each application for a license to act as a rating or advisory organization pursuant to this part or a workers' compensation advisory organization pursuant to part 10 and the documents filed with the application and may make a further investigation of the applicant, its affairs, and its proposed plan of business as the commissioner considers appropriate.

(2) The commissioner shall issue the license applied for within 60 days of its filing if, from the examination and investigation, the commissioner is satisfied that:

(a) the business reputation of the applicant and its officers is good;

(b) the facilities of the applicant are adequate to enable it to furnish the services it proposes to furnish; and

(c) the applicant and its proposed plan of operation conform to the requirements of this chapter.

(3) Otherwise, but only after a hearing upon notice, the commissioner shall, in writing, deny the application and notify the applicant of the decision and the reasons for the denial.

(4) The commissioner may grant an application in part only and issue a license to act as a rating, advisory, or workers' compensation advisory organization for one or more of the classes of insurance or subdivisions of the classes of insurance or class of risk, or a part or combination of a class of risk as are specified in the application, if the applicant qualifies for only a portion of the classes applied for.

(5) (a) Except as provided in subsection (5)(b), licenses issued pursuant to this section remain in effect until revoked as provided in this chapter. The fee for the license is \$100 annually and must be deposited in the ~~general state special revenue fund~~ *to the credit of the state auditor's office*.

(b) Each workers' compensation advisory organization is required to renew its license annually."

**Section 20.** Section 33-17-503, MCA, is amended to read:

**"33-17-503. Application — fee — expiration.** (1) Before a consultant license is issued or renewed, the prospective licensee shall:

(a) properly file ~~in~~ with the office of the commissioner a written application on forms the commissioner prescribes; and

(b) pay a fee ~~of \$50 pursuant to 33-2-708~~, which the commissioner shall ~~deposit with forward to the state treasurer to be credited to the state's general deposited in the state special revenue fund to the credit of the state auditor's office.~~

(2) ~~Each consultant license must be renewed each year by the consultant paying a continuation fee on or before May 31, and the license continues in force unless suspended, revoked, or otherwise terminated. A consultant license continues in force until lapsed, suspended, revoked, or terminated.~~"

**Section 21.** Section 33-17-511, MCA, is amended to read:

**"33-17-511. Consideration for services only on written memorandum.** A person licensed as an insurance consultant under this part may not receive a fee for examining, appraising, reviewing, or evaluating an insurance policy, bond, annuity or pension or profit-sharing contract, plan, or program or for making recommendations or giving advice with regard to any of the above unless the compensation is based upon a written memorandum *that includes the insurance consultant's Montana insurance license number and is signed by the party to be charged and specifying or clearly defining the amount or extent of the compensation.* An insurance consultant shall retain a copy of every memorandum or contract for not less than 3 years after those services have been fully performed."

**Section 22.** Section 33-17-1102, MCA, is amended to read:

**"33-17-1102. Reporting and accounting for premiums — misappropriation.** (1) All insurance premiums or return premiums received by an insurance producer must be held in a separate trust account. The insurance producer shall at all times act in a fiduciary capacity and shall, in the applicable regular course of business, account for and pay the insurance premiums or return premiums ~~he the insurance producer receives to the insured, insurer, or insurance producer entitled to them.~~ Except for a title insurance producer as defined in 33-25-105, an insurance producer may deposit and commingle in the same separate deposit all funds belonging to others so long as the amount of the deposit held for each respective person is reasonably ascertainable from the records and accounts of the licensee.

(2) Any insurance producer not lawfully entitled to the funds may not divert or appropriate the funds or any portion of the funds to ~~his the insurance producer's~~ own use.

(3) An insurance producer who ~~unlawfully purposely or knowingly~~ ~~appropriates misappropriates~~ insurance premiums or return premiums to his own use is, upon conviction, guilty of theft and is punishable as provided by law ~~commits theft pursuant to 45-6-301.~~"

**Section 23.** Section 33-17-1204, MCA, is amended to read:

**"33-17-1204. Review and approval of continuing education courses by commissioner — advisory council.** (1) The commissioner shall, after review by and at the recommendations of the advisory council established under subsection (2), approve only those continuing education courses, lectures, seminars, and instructional programs that the commissioner determines would improve the product knowledge, management, ethics, or marketing capability of the licensee. Course content, instructors, material, instructional format, and the sponsoring organization must be approved and periodically reviewed by the

commissioner. The fee for approval of a course, lecture, seminar, or instructional program is listed in 33-2-708(2). The commissioner shall also determine the number of credit hours to be awarded for completion of an approved continuing education activity.

(2) The commissioner shall appoint an advisory council, pursuant to 2-15-122, consisting of at least one representative of the independent insurance agents of Montana, one representative of the ~~national~~ *Montana* association of insurance and financial ~~advisors~~ *Montana advisors*, one representative of the professional insurance agents of Montana, one title insurance producer, two public members who are not directly employed by the insurance industry, one insurance producer or consultant not affiliated with any of the three listed organizations, and a nonvoting presiding officer from the department who will be appointed by the commissioner as a representative of the department. The members of the council shall serve a term of 2 years, except that the initial term of the representative from each organization is 3 years. The commissioner shall consult with the council in formulating rules and standards for the approval of continuing education activities and prior to approving specific education activities. The provisions of 2-15-122(9) and (10) do not apply to this council.

(3) In conducting periodic review of course content, instructors, material, instructional format, or a sponsoring organization, the commissioner may exercise any investigative power of the commissioner provided for in 33-1-311 or 33-1-315.

(4) If after review or investigation the commissioner determines an approved continuing education activity is not being operated in compliance with the standards established under this section, the commissioner may revoke approval, place the activity under probationary approval, or issue a cease and desist order under 33-1-318.”

**Section 24.** Section 33-20-101, MCA, is amended to read:

**“33-20-101. Scope.** (1) Except as provided in subsection (2), parts 1 through 5 of this chapter apply only to contracts of life insurance and annuities, other than reinsurance, group life insurance, and group annuities.

(2) Sections 33-20-114, 33-20-131, and 33-20-150 also apply to group life insurance, and *33-20-114, 33-20-124, and 33-20-150 also apply to group annuities.*”

**Section 25.** Section 33-20-103, MCA, is amended to read:

**“33-20-103. Standard provisions required — exceptions.** (1) ~~No~~ A policy of life insurance, other than group and pure endowments with or without return of premiums or of premiums and interest, ~~shall~~ *may not* be delivered or issued for delivery in this state unless it contains in substance all of the applicable provisions as required by 33-20-104 through 33-20-108, 33-20-110 through 33-20-116, and 33-20-131.

(2) This section ~~shall~~ *does not* apply to annuity contracts or to any provision of a life insurance policy, or contract supplemental ~~thereto~~ *to an annuity contract or life insurance policy*, relating to disability benefits or to additional benefits in the event of death by accident or accidental means. *However, the provisions of 33-20-114 do apply to annuity contracts.*

(3) Any ~~of such provisions~~ *provision* or portions ~~thereof~~ *thereof* of a provision not applicable to single premium or term policies ~~shall~~ *may not* to that extent ~~not~~ be incorporated ~~therein~~ *in single premium or term policies.*”



**Section 26.** Section 33-20-105, MCA, is amended to read:

**“33-20-105. Incontestability.** (1) There ~~shall~~ *must* be a provision that the policy, exclusive of provisions relating to disability benefits or to additional benefits in the event of death by accident or accidental means, ~~shall be~~ *is* incontestable, except for nonpayment of premiums, after it has been in force during the lifetime of the insured for a period of 2 years from its date of issue.

(2) *A policy issued in connection with an exchange or a conversion is incontestable from the time of issue.”*

**Section 27.** Section 33-20-114, MCA, is amended to read:

**“33-20-114. Payment of claims — interest.** (1) There ~~shall~~ *must* be a provision, which may be made by endorsement, that when a claim is made upon the death of the insured, settlement ~~shall~~ *must* be made upon receipt of proof of death and, at the insurer’s option, surrender of the policy ~~and/or~~ *or* proof of the interest of the claimant, *or both*.

(2) There ~~shall~~ *must* be a provision, which may be made by endorsement, that settlement *must* be made within 60 days of receipt of proof of death and that if settlement is made after the first 30 days, the settlement ~~shall~~ *must* include interest from the 30th day until settlement. Interest ~~shall~~ *must* be paid at the discount rate on 90-day commercial paper in effect at the federal reserve bank in the ninth federal reserve district at the time of proof of death *or at the rate stated in the policy, whichever is greater*. The settlement period and interest provisions of this subsection apply to all claims upon deaths filed with an insurer ~~after October 1, 1985~~, regardless of whether those provisions are included in the policy.”

**Section 28.** Section 33-20-1202, MCA, is amended to read:

**“33-20-1202. Grace period.** The group life insurance policy ~~shall~~ *and certificate must* contain a provision that the policyholder is entitled to a grace period of 31 days for the payment of any premium due except the first, during which grace period the death benefit coverage ~~shall~~ *must* continue in force, unless the policyholder ~~shall have~~ *has* given the insurer written notice of discontinuance in advance of the date of discontinuance and in accordance with the terms of the policy. The policy may provide that the policyholder ~~shall be~~ *is* liable to the insurer for the payment of a pro rata premium for the time the policy was in force during ~~such~~ *the* grace period.”

**Section 29.** Section 33-20-1203, MCA, is amended to read:

**“33-20-1203. Incontestability.** The group life insurance policy ~~shall~~ *and certificate must* contain a provision that the validity of the policy ~~shall~~ *may* not be contested, except for nonpayment of premium, after it has been in force for 2 years from its date of issue and that ~~no~~ a statement made by any person insured under the policy relating to ~~his~~ *the person’s* insurability ~~shall~~ *may not* be used in contesting the validity of the insurance with respect to which ~~such~~ *the* statement was made after ~~such~~ *the* insurance has been in force prior to the contest for a period of 2 years during ~~such~~ *the* person’s lifetime or unless it is contained in a written instrument signed by ~~him~~ *the person*.”

**Section 30.** Section 33-20-1204, MCA, is amended to read:

**“33-20-1204. Application — statements deemed considered representations.** The group life insurance policy ~~shall~~ *and certificate must* contain a provision that a copy of the application, if any, of the policyholders ~~shall~~ *must* be attached to the policy when issued, that all statements made by the

policyholder or by the persons insured ~~shall~~ *must* be ~~deemed~~ *considered* representations and not warranties, and that ~~no~~ a statement made by any person insured ~~shall~~ *may not* be used in any contest unless a copy of the instrument containing the statement is or has been furnished to ~~such~~ *the* person or to ~~his~~ *the person's* beneficiary."

**Section 31.** Section 33-20-1205, MCA, is amended to read:

**"33-20-1205. Insurability.** The group life insurance policy ~~shall~~ *and certificate must* contain a provision setting forth the conditions, if any, under which the insurer reserves the right to require a person eligible for insurance to furnish evidence of individual insurability satisfactory to the insurer as a condition to part or all of ~~his~~ *the person's* coverage."

**Section 32.** Section 33-20-1206, MCA, is amended to read:

**"33-20-1206. Misstatement of age.** The group life insurance policy ~~shall~~ *and certificate must* contain a provision specifying an equitable adjustment of premiums or of benefits or of both to be made in the event the age of a person insured has been misstated. ~~such~~ *The provision to* ~~must~~ contain a clear statement of the method of adjustment to be used."

**Section 33.** Section 33-20-1207, MCA, is amended to read:

**"33-20-1207. Payment of benefits.** (1) The group life insurance policy ~~shall~~ *and certificate must* contain a provision that any ~~sum~~ *benefits* becoming due by reason of the death of the person insured ~~shall be~~ *are* payable to the beneficiary designated by the person insured, subject to the provisions of the policy. ~~In the event there is no not a designated beneficiary as to all or any part of such sum living at the death of the person insured and subject to any right reserved by the insurer in the policy and set forth in the certificate to pay at its option a part of such sum not exceeding \$500 to any person appearing to the insurer to be equitably entitled thereto by reason of having incurred funeral or other expenses incident to the last illness or death of the person insured with regard to all or some of the benefits, then those benefits must be considered a part of the intestate estate, pursuant to 72-2-111. In addition, the insurer may pay a benefit amount not exceeding \$500 to any person appearing to the insurer to be equitably entitled to that amount by reason of having incurred funeral or other expenses incident to the last illness or death of the person insured.~~

(2) The provisions of 33-20-114(2) ~~shall~~ *must* be incorporated into the group life insurance policy *and certificate* and are applicable as set out in that subsection."

**Section 34.** Section 33-20-1209, MCA, is amended to read:

**"33-20-1209. Conversion on termination of eligibility.** (1) The group life insurance policy or certificate must contain a provision that if the insurance or any portion of it on a person covered under the policy ceases because of termination of employment or of membership in the class or classes eligible for coverage under the policy, the person is entitled to have issued to the person by the insurer, without evidence of insurability, an individual policy of life insurance if the application for the individual policy is made and the first premium is paid to the insurer within 31 days after termination and provided that:

(a) the individual policy must, at the option of the person, be on any one of the forms, including but not limited to term insurance, if the group policy provides for term insurance, then customarily issued by the insurer at the age

and for the amount applied for, and must offer benefits at least equal to those under the group coverage;

(b) the individual policy must, at the option of the insured, be in an amount not in excess of the amount of life insurance that ceases because of the termination, less the amount of any life insurance for which the person is insured under any other group policy within 31 days after the termination, provided that any amount of insurance that has matured on or before the date of the termination as an endowment payable to the person insured, whether in one sum or in installments or in the form of an annuity, may not, for the purposes of this provision, be included in the amount that is considered to cease because of the termination; and

(c) the premium on the individual policy is the insurer's then customary rate applicable to the form and amount of the individual policy, to the class of risk that the person belongs, and to the person's age attained on the effective date of the individual policy.

*(2) A group insurer may meet the requirements of this section by contracting with another insurer to issue conversion policies as described in subsection (1). The conversion carrier must be authorized to act as an insurer in this state and shall submit the conversion policies to the commissioner.*

~~(2)~~(3) With the consent of the employer, a person covered under a group life insurance policy issued to an employer or to the trustees of a fund established by an employer under 33-20-1101 may continue the person's coverage under the group policy during the person's employment ~~notwithstanding even if there has been~~ a reduction of the person's regular work schedule to less than the minimum number of hours required for eligibility for membership. The premium charged for the continued coverage must be equal to that charged other members of the group. The person's coverage under the group will cease if the person subsequently becomes eligible for coverage under another group policy because of employment elsewhere."

**Section 35.** Section 33-20-1210, MCA, is amended to read:

**"33-20-1210. Conversion on termination of policy or certificate.** (1) The group life insurance policy or certificate must contain a provision that if the group policy or certificate terminates or is amended to terminate the insurance of any class of insured persons, every person insured under the group policy or certificate at the date of the termination whose insurance terminates and who has been insured for at least 3 years prior to the termination date is entitled to have issued to the person by the insurer an individual policy of life insurance, subject to the same conditions and limitations that are provided by 33-20-1209, except that the group policy or certificate may provide that the amount of the individual policy may not exceed the smaller of:

~~(1)~~(a) the amount of the person's life insurance protection ceasing because of the termination or amendment of the group policy or certificate, less the amount of any life insurance for which the person is or becomes eligible under any group policy issued or reinstated by the same or another insurer within 31 days after the termination; or

~~(2)~~(b) \$10,000.

*(2) A group insurer may meet the requirements of this section by contracting with another insurer to issue conversion policies as described in subsection (1). The conversion carrier must be authorized to act as an insurer in this state and shall submit the conversion policies to the commissioner."*

**Section 36.** Section 33-20-1213, MCA, is amended to read:

**“33-20-1213. Policy and certificate provisions — conformity with state statutes.** Each policy *and certificate* regulated by this part must contain a provision or ~~the~~ *its* equivalent ~~thereto~~ as follows:

“Conformity with Montana statutes. The provisions of this policy *or certificate* conform to the minimum requirements of Montana law and control over any conflicting statutes of any state in which the insured resides on or after the effective date of this policy *or certificate*.”

**Section 37.** Section 33-22-101, MCA, is amended to read:

**“33-22-101. Exceptions to scope.** Parts 1 through 4 of this chapter, except 33-22-107, 33-22-110, 33-22-111, 33-22-114, 33-22-125, 33-22-129, 33-22-130 through 33-22-136, 33-22-140, 33-22-141, 33-22-142, 33-22-243, and 33-22-304, and part 19 of this chapter do not apply to or affect:

- (1) any policy of liability or workers' compensation insurance with or without supplementary expense coverage;
- (2) any group or blanket policy;
- (3) life insurance, endowment, or annuity contracts or supplemental contracts that contain only those provisions relating to disability insurance ~~as~~ *that*:
  - (a) provide additional benefits in case of death or dismemberment or loss of sight by accident or accidental means; or
  - (b) operate to safeguard contracts against lapse or to give a special surrender value or special benefit or an annuity in the event that the insured or annuitant becomes totally and permanently disabled, as defined by the contract or supplemental contract;
  - (4) reinsurance.”

**Section 38.** Section 33-22-107, MCA, is amended to read:

**“33-22-107. Premium increase restriction — exception.** (1) An insurer or a health service corporation that issues *or renews* a policy, certificate, or membership contract covering a resident of this state may not increase a premium in an individual's or an individual's group disability insurance policy more frequently than once during a 12-month period unless failure to increase the premium more frequently than once during the 12-month period would:

- (a) place the insurer in violation of the laws of this state; or
  - (b) cause the financial impairment of the insurer to the extent that further transaction of insurance by the insurer injures or is hazardous to its policyholders or to the public.
- (2) Subsection (1) does not apply to a premium increase necessitated by a state or federal law, court decision, or rule adopted by an agency of competent jurisdiction of the state or federal government.”

**Section 39.** Section 33-22-303, MCA, is amended to read:

**“33-22-303. Coverage for well-child care.** (1) Each medical expense policy of disability insurance or certificate issued under the policy that is delivered, issued for delivery, renewed, extended, or modified in this state by a disability insurer and that provides coverage for a family member of the insured or subscriber must provide coverage for well-child care for children from the moment of birth through 2 years of age. Benefits provided under this coverage

are exempt from any deductible provision that may be in force in the policy or certificate issued under the policy.

(2) Coverage for well-child care under subsection (1) must include:

(a) 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

(b) routine immunizations according to the schedule for immunizations recommended by the immunization practices advisory committee of the U.S. department of health and human services.

(3) Minimum benefits may be limited to one visit payable to one provider for all of the services provided at each visit cited in this section.

(4) This section does not apply to disability income, specified disease, *accident-only*, medicare supplement, or hospital indemnity policies.

(5) For purposes of this section:

(a) "well-child care" means the services described in subsection (2) and delivered by a physician or a health care professional supervised by a physician; and

(b) "developmental assessment" and "anticipatory guidance" mean the services described in the Guidelines for Health Supervision II, published by the American academy of pediatrics.

(6) When a policy of disability insurance or a certificate issued under the policy provides coverage or benefits to a resident of this state, it is considered to be delivered in this state within the meaning of this section, whether the insurer that issued or delivered the policy or certificate is located inside or outside of this state."

**Section 40.** Section 33-22-512, MCA, is amended to read:

**"33-22-512. Coverage for well-child care.** (1) Each group disability policy or certificate of insurance that is delivered, issued for delivery, renewed, extended, or modified in this state by a disability insurer and that provides coverage for a family member of the insured or subscriber must provide coverage for well-child care for children from the moment of birth through 2 years of age. Benefits provided under this coverage are exempt from any deductible provision that may be in force in the policy or certificate issued under the policy.

(2) Coverage for well-child care under subsection (1) must include:

(a) 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

(b) routine immunizations according to the schedule for immunizations recommended by the immunization practices advisory committee of the U.S. department of health and human services.

(3) Minimum benefits may be limited to one visit payable to one provider for all of the services provided at each visit cited in this section.

(4) This section does not apply to disability income, specified disease, *accident-only*, medicare supplement, or hospital indemnity policies or *certificates*.

(5) For purposes of this section:

(a) "well-child care" means the services described in subsection (2) and delivered by a physician or a health care professional supervised by a physician; and

(b) "developmental assessment" and "anticipatory guidance" mean the services described in the Guidelines for Health Supervision II, published by the American academy of pediatrics.

(6) When a group disability policy or certificate of insurance issued under the policy provides coverage or benefits to a resident of this state, it is considered to be delivered in this state within the meaning of this section, whether the insurer that issued or delivered the policy or certificate is located inside or outside of this state."

**Section 41.** Section 33-22-1512, MCA, is amended to read:

**"33-22-1512. Association plan and association portability plan premium.** (1) The association shall establish the schedule of premiums to be charged eligible persons for membership in the association plan. The schedule of association plan premiums for eligible persons may not exceed 200% of the average premium rates charged by the five insurers or health service corporations with the largest premium amount of individual plans of major medical insurance in force in this state. The schedule of association portability plan premiums for federally defined eligible individuals may not at any time exceed 150% of the average premium rates charged by the five insurers or health service corporations with the largest premium amount of individual plans of major medical insurance in force in this state. The premium rates of the five insurers or health service corporations used to establish the premium rates for each type of coverage offered by the association must be determined by the commissioner from information provided annually at the request of the commissioner. The association shall use generally acceptable actuarial principles and structurally compatible rates.

(2) (a) The association, with the approval of the commissioner, may adopt a reduced premium rate schedule that is equitably proportional to the income level for eligible persons who have an income less than or equal to 150% of the federal poverty level. ~~The association may not adopt a reduced premium rate schedule unless it has secured federal or private funding specifically for that purpose and limits participation to the available funding. The association may not adopt a reduced premium rate schedule unless it has secured federal, state, or private funding specifically for that purpose and the use of the reduced premium rate schedule is limited to the available federal, state, or private funding.~~

(b) The association, with the approval of the commissioner, may adopt as many income categories as it finds necessary.

(c) Any person who qualifies for coverage under this section may apply to the association for a reduced premium. However, eligible persons with coverage in the traditional association plan must receive first priority for reduced premiums. By agreement of the association and the commissioner, reduced premiums may be made available to persons eligible for the portability plan.

(d) The association may grant as many reduced premiums as funding sources allow but may not increase overall premium rates to subsidize the

reduced premium rate schedule. The association may limit the number of people receiving reduced premiums when funds are not available and may establish a waiting list for reduced premiums, if necessary.”

**Section 42.** Section 33-22-1513, MCA, is amended to read:

**“33-22-1513. Operation of association plan and association portability plans.** (1) Upon acceptance by the lead carrier under 33-22-1516, an eligible person may enroll in the association plan by payment of the association plan premium to the lead carrier.

(2) Upon application by a federally defined eligible individual to the lead carrier for an association portability plan, the association may not:

(a) decline to offer an association portability plan; or

(b) impose a preexisting condition exclusion with respect to an individual's association portability plan coverage if application for association portability plan coverage is made within 63 days following termination of the applicant's most recent prior creditable coverage.

(3) Not less than 88% of the association plan premiums paid to the lead carrier may be used to pay claims and not more than 12% may be used for payment of the lead carrier's direct and indirect expenses as specified in 33-22-1514.

(4) Any income in excess of the costs incurred by the association in providing reinsurance or administrative services must be held at interest and used by the association to offset past and future losses because of claims expenses of the association plan and the association portability plan or be allocated to reduce association plan premiums.

(5) (a) Each participating member of the association shall share the losses because of claims expenses of the association plan and the association portability plan for plans issued or approved for issuance by the association and shall share in the operating and administrative expenses incurred or estimated to be incurred by the association incident to the conduct of its affairs in the following manner:

(i) Each participating member of the association must be assessed by the association on an annual basis an amount not to exceed 1% of the association member's total disability insurance premium received from or on behalf of Montana residents as determined by the commissioner. Assessments made under this subsection (5)(a) or funds from any other source must be allocated to the association plan and the association portability plan in proportion to the needs of the two plans. If the needs of the association plan and the association portability plan exceed the funds generated by the 1% assessment, the association is then authorized to spend any funds appropriated by the legislature for the support of the plans. Any appropriation to the association may be expended for the operation of the association plan or the association portability plan.

(ii) (A) Payment of an assessment is due within 30 days of receipt by a member of a written notice of the annual assessment. After 30 days, the association shall charge a member:

(I) a late payment penalty of 1.5% a month or fraction of a month on the unpaid assessment, not to exceed 18% of the assessment due;

(II) interest at the rate of 12% a year on the unpaid assessment, to be accrued at 1% a month or fraction of a month; or

(III) both of the charges in subsections (5)(a)(ii)(A)(I) and (5)(a)(ii)(A)(II).

(B) Failure by a contributing member to tender the association assessment within the 30-day period is grounds for termination of membership. A member terminated for failure to tender the association assessment is ineligible to write health care benefit policies or contracts in this state under 33-22-1503(2).

(iii) An associate member that ceases to do disability insurance business within the state remains liable for assessments through the calendar year in which the member ceased doing disability insurance business. The association may decline to levy an assessment against an association member if the assessment, as determined pursuant to this section, would not exceed \$50.

(b) For purposes of this subsection (5), "total disability insurance premium" does not include premiums received from disability income insurance, credit disability insurance, disability waiver insurance, life insurance, medicare risk or other similar medicare health maintenance organization payments, or medicaid health maintenance organization payments.

(c) Any income in excess of the incurred or estimated claims expenses of the association plan and the association portability plan and the operating and administrative expenses of the association must be held at interest and used by the association to offset past and future losses because of claims expenses of the association plan and the association portability plan or be allocated to reduce association plan premiums.

(6) The proportion of the annual assessment allocated to the operation and expenses of the association plan, not to include any amount of late payment penalty or interest charged, may be offset by an association member against the premium tax payable by that association member pursuant to 33-2-705 for the year in which the annual assessment is levied. The commissioner shall report to the office of budget and program planning, as a part of the information required by 17-7-111, the total amount of premium tax offset claimed by association members during the preceding biennium. The proportion of the annual assessment allocated to the operation and expenses of the association portability plan and levied against an association member may not be offset against the premium tax payable by that association member.

(7) *The association may also accept funding from the federal government, private foundations, and other private funding sources.*

**Section 43.** Section 33-23-212, MCA, is amended to read:

**"33-23-212. Notice required for cancellation — statement that insurer will specify reason upon request — exception — penalty.** (1) ~~Notwithstanding any other provision of this code, a~~ A cancellation by an insurer of a motor vehicle liability insurance policy ~~may~~ is not be effective prior to the mailing or delivery to the named insured, at the address shown in the policy, of a written notice of the cancellation stating the date on which, not less than 30 days after the date of ~~such~~ the mailing or delivery, the cancellation becomes effective. *Other provisions of this code may not be construed as affecting the requirements provided in this subsection (1).*

(2) A notice of cancellation of a policy to which 33-23-211 applies ~~may~~ is not be effective unless mailed or delivered by the insurer to the named insured at least 30 days prior to the effective date of cancellation; ~~provided, however, that~~ *where* However, if cancellation is for nonpayment of premium, at least 10 days' notice of cancellation accompanied by the reason must be given. Unless the reason accompanies or is included in the notice of cancellation, the notice of



cancellation must state or be accompanied by a statement that upon written request of the named insured, mailed or delivered to the insurer not less than 21 days prior to the effective date of cancellation, the insurer shall specify the reason for the cancellation.

(3) Subsection (2) does not apply to nonrenewal.

~~(4) Any insurer willfully violating any provisions of subsection (2) of this section is guilty of a misdemeanor and is punishable by a fine not exceeding \$500 for each violation thereof.~~

**Section 44.** 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; 33-3-431; 33-3-701 through 33-3-704; 33-17-101; *Title 33, chapter 2, part 19*; Title 33, chapter 17, parts 2 and 10 through 12; and Title 33, chapters 1, 15, 18, 19, and 22, 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 45.** Section 33-30-107, MCA, is amended to read:

**“33-30-107. Annual statement.** (1) On or before March 1 of each year, each health service corporation shall file an annual statement for the preceding year on the national association of insurance commissioners' health blank form with the commissioner of insurance. This annual statement must be completed in accordance with the annual statement instructions and the Accounting Practices and Procedures Manual of the national association of insurance commissioners. The statement must be accompanied by an actuarial opinion attesting to the insurer's reserves.

(2) The health service corporation shall file a statement containing any other information concerning its financial affairs that may be reasonably requested by the commissioner.

(3) (a) Each health service corporation shall file electronic versions of its annual and quarterly financial statements with the national association of insurance commissioners. The date for submission of the annual statement electronic filing is March 1. The dates for submission of the quarterly statement electronic filing are as follows:

- (i) the first quarter filing is due May 15;
- (ii) the second quarter filing is due August 15; and
- (iii) the third quarter filing is due November 15.

(b) The commissioner may exempt health service corporations operating only in Montana from these filing requirements.

(c) *The health service corporation shall pay all fees and costs associated with preparing the annual statement and other filings and submitting them to the national association of insurance commissioners.*

(4) The commissioner may, after notice and hearing, suspend or revoke a health service corporation's license or impose a fine not to exceed \$100 a day and

not to exceed \$1,000 upon a health service corporation that fails to file an annual statement as required by this part.”

**Section 46.** Section 33-30-204, MCA, is amended to read:

**“33-30-204. Fees.** (1) Every health service corporation subject to the provisions of this chapter shall pay the following fees to the commissioner for enforcement of the provisions of this chapter:

- ~~(a) filing any statement or report~~ .....\$1
- ~~(b)~~(a) for a certified copy of any document or other paper filed in the office of the commissioner, per page, .....~~\$~~ 50 50 cents;
- ~~(c) for a certificate with affixed seal~~ .....\$10
- ~~(d)~~(b) filing of a membership contract, .....\$25;
- ~~(e)~~(c) filing of a membership contract package, .....\$100;
- ~~(f)~~(d) filing annual statement, .....\$25;
- ~~(g)~~(e) issuance of health service corporation license, .....\$300; and
- ~~(h)~~(f) annual continuation of health service corporation license, .....\$300.

(2) The commissioner shall promptly deposit with the state treasurer, to the credit of the ~~general~~ *state special revenue fund of the state auditor's office*, all fees and license fees received under this section.”

**Section 47.** 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 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) ~~Chapter Title 33, chapter 1, parts 12 and 13, of this title, Title 33, chapter 2, part 19, 33-2-1114, 33-2-1211, 33-2-1212, 33-3-422, 33-3-431, 33-15-308, Title 33, chapter 19, 33-22-129, 33-22-131, 33-22-136, 33-22-141, 33-22-142, 33-22-244, 33-22-246, 33-22-247, 33-22-514, 33-22-521, 33-22-523, 33-22-524, 33-22-526, and 33-22-706 apply to health maintenance organizations.~~ Title 33, chapter 1, parts 12 and 13, of this title, Title 33, chapter 2, part 19, 33-2-1114, 33-2-1211, 33-2-1212, 33-3-422, 33-3-431, 33-15-308, Title 33, chapter 19, 33-22-129, 33-22-131, 33-22-136, 33-22-141, 33-22-142, 33-22-244, 33-22-246, 33-22-247, 33-22-514, 33-22-521, 33-22-523, 33-22-524, 33-22-526, and 33-22-706 apply to health maintenance organizations."

**Section 48.** 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 ~~thereto~~ 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) and 33-31-405 collected by the commissioner pursuant to this chapter and the rules adopted ~~thereunder~~ under this chapter must be deposited in the ~~general~~ state special revenue fund to the credit of the state auditor's office."

**Section 49.** 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 of Title 33:

(a) 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;

(b) Title 33, chapter 1, part 7;

(c) 33-3-308;

(d) Title 33, chapter 18, except 33-18-242;

(e) Title 33, chapter 19;

~~(e)~~(f) 33-22-131, 33-22-134, and 33-22-135; and

~~(f)~~(g) 33-22-525 and 33-22-526.

(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."

**Section 50.** 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 or 72, 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.*

(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) A person convicted of the offense of theft of property not exceeding \$1,000 in value shall be fined an amount not to exceed \$1,000 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 \$1,000 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 \$1,000 and be imprisoned in the county jail for a term of not less than 30 days or more than 6 months.

(b) Except as provided in subsection (8)(c), a person convicted of the offense of theft of property exceeding \$1,000 in value or theft of any commonly domesticated hoofed animal 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.

(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 51.** Section 50-3-109, MCA, is amended to read:

**"50-3-109. Tax on fire insurance premiums.** (1) Each insurer authorized to effect insurance on risks enumerated in subsection (2) that is doing business in this state shall pay to the state auditor during the month of February or March in each year, in addition to the taxes on premiums required by law to be paid by it, taxes on the fire portion of the direct premiums on the enumerated risks received during the previous calendar year after deducting cancellations and return premiums. A tax of 2 1/2% must be deposited in the general fund as provided in ~~17-2-121~~ 33-2-708.

(2) The risks referred to in subsection (1) are:

(a) insurance of houses, buildings, and all other kinds of property against loss or damage by fire or other casualty;

(b) all kinds of insurance on goods, merchandise, or other property in the course of transportation, whether by land, water, or air;

(c) insurance against loss or damage to motor vehicles resulting from accident, collision, or marine and inland navigation and transportation perils;

(d) insurance of growing crops against loss or damage resulting from hail or the elements;

(e) insurance against loss or damage by water to any goods or premises arising from the breakage or leakage of sprinklers, pumps, or other apparatus;

(f) insurance against loss or legal liability for loss because of damage to property caused by the use of teams or vehicles, whether by accident or collision or by explosion of any engine, tank, boiler, pipe, or tire of any vehicle; and

(g) insurance against theft of the whole or any part of a vehicle."

**Section 52. Repealer.** Section 17-2-121, MCA, is repealed.

**Section 53. Codification instruction.** (1) [Sections 1 through 4] are intended to be codified as an integral part of Title 33, chapter 3, and the provisions of Title 33, chapter 3, apply to [sections 1 through 4].

(2) [Section 5] is intended to be codified as an integral part of Title 33, chapter 1, part 2, and the provisions of Title 33, chapter 1, part 2, apply to [section 5].

**Section 54. Coordination instruction.** If House Bill No. 169 and [this act] are both passed and approved and if both amend 33-17-503, then [section 18 of House Bill No. 169], amending 33-17-503, is void.

Approved April 17, 2003

## CHAPTER NO. 381

[HB 157]

AN ACT REPEALING THE REQUIREMENT FOR PROCUREMENT AND SALE OF ARTWORK FOR A MIGRATORY BIRD STAMP; REQUIRING THAT FUNDS RECEIVED FROM THE SALE OF MIGRATORY GAME BIRD LICENSES BE EXPENDED FOR THE PROTECTION, CONSERVATION, AND DEVELOPMENT OF WETLANDS IN MONTANA; PROVIDING THAT MIGRATORY GAME BIRD HUNTERS MUST BE REPRESENTED ON THE ADVISORY COUNCIL THAT REVIEWS PROPOSALS FOR EXPENDITURE OF THE FUNDS; AMENDING SECTIONS 2-15-3405, 87-1-601, AND 87-2-411, MCA; REPEALING SECTION 87-2-412, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 2-15-3405, MCA, is amended to read:

**“2-15-3405. Appointment of wetlands protection advisory council.**

(1) The director of fish, wildlife, and parks shall appoint an advisory council pursuant to 2-15-122 to review proposals developed by the department of fish, wildlife, and parks ~~which~~ *that* involve the use of money received by the department under ~~87-2-412~~ *87-2-411* for the protection, conservation, and development of wetlands in Montana.

(2) Members must be appointed to the advisory council who represent Montana ~~sportsmen~~ *migratory game bird hunters*, nonconsumptive users of wildlife, and the agricultural industry.”

**Section 2.** Section 87-1-601, MCA, is amended to read:

**“87-1-601. Use of fish and game money.** (1) (a) Except as provided in subsection (7), all money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from damages collected for violations of the fish and game laws of this state, or from appropriations or received by the department from any other state source must be turned over to the department of revenue and placed in the state special revenue fund to the credit of the department.

(b) Any money received from federal sources must be deposited in the federal special revenue fund to the credit of the department.

(c) All interest earned on money from the following sources must be placed in the state special revenue fund to the credit of the department:

(i) the general license account;

(ii) the license drawing account;

(iii) accounts established to administer the provisions of 87-1-246, 87-1-258, 87-1-605, ~~87-2-412~~ *87-2-411*, 87-2-722, and 87-2-724; and

(iv) money received from the sale of any other hunting and fishing license.

(2) ~~The~~ *Except as provided in 87-2-411, the money described in subsection (1) must be exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses, and expenditures authorized to be made by the department under the terms of this title. The money described in subsection (1) must be spent for those purposes by the department, subject to appropriation by the legislature.*

(3) Any reference to the fish and game fund in this code means fish and game money in the state special revenue fund and the federal special revenue fund.

(4) Except as provided in subsections (7) and (8), all money collected or received from fines and forfeited bonds, except money collected or received by a justice's court, that relates to violations of state fish and game laws under Title 87 must be deposited by the department of revenue and credited to the department in a state special revenue fund account for this purpose. Out of any fine imposed by a court for the violation of the fish and game laws, the costs of prosecution must be paid to the county where the trial was held in any case in which the fine is not imposed in addition to the costs of prosecution.

(5) (a) Money must be deposited in an account in the permanent fund if it is received by the department from:

(i) the sale of surplus real property;

(ii) exploration or development of oil, gas, or mineral deposits from lands acquired by the department except royalties or other compensation based on production; and

(iii) leases of interests in department real property not contemplated at the time of acquisition.

(b) The interest derived from the account, but not the principal, may be used only for the purpose of operation, development, and maintenance of real property of the department and only upon appropriation by the legislature. If the use of money as set forth in this section would result in violation of applicable federal laws or state statutes specifically naming the department or money received by the department, then the use of this money must be limited in the manner, method, and amount to those uses that do not result in a violation.

(6) Money received from the collection of license drawing applications is not subject to the deposit requirements of 17-6-105. The department shall deposit license drawing application money within a reasonable time after receipt.

(7) Money collected or received from fines or forfeited bonds for the violation of 77-1-801, 77-1-806, or rules adopted under 77-1-804 must be deposited in the state general fund.

(8) The department of revenue shall deposit in the state general fund one-half of the money received from the fines pursuant to 87-1-102."

**Section 3.** Section 87-2-411, MCA, is amended to read:

**"87-2-411. License required to hunt migratory game birds — fees — disposition of proceeds.** (1) ~~It is unlawful for any~~ A person 16 years of age or older ~~to~~ may not hunt migratory game birds without first having obtained a valid migratory bird license from the department. The fee for a resident to purchase the license is \$5. The fee for a nonresident to purchase the license is \$50.

(2) Money received from the sale of migratory game bird licenses must be deposited in an account in the state special revenue fund for the use of the

department and may be expended only for the protection, conservation, and development of wetlands in Montana.”

**Section 4. Repealer.** Section 87-2-412, MCA, is repealed.

**Section 5. Effective date.** [This act] is effective on passage and approval.

Approved April 18, 2003

## CHAPTER NO. 382

[HB 161]

AN ACT CLARIFYING THE LAW RELATING TO THE RIGHT OF A YOUTH TO WAIVE A PAROLE REVOCATION HEARING; AMENDING SECTION 52-5-129, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 52-5-129, MCA, is amended to read:

**“52-5-129. Hearing on alleged violation of parole agreement — waiver of hearing — right to appeal outcome.** (1) When it is alleged by a juvenile parole officer that a youth has violated the terms of the youth’s parole agreement, the youth must be granted a hearing, *unless a hearing is waived as provided in subsection (3)*, at the site of the alleged violation or in the county in which the youth is residing or is found within 10 days after notice has been served on the youth or the youth is detained, whichever is earlier. At the discretion of the hearings officer, this hearing may be held by means of interactive video transmission. The purpose of the hearing is to determine whether the youth committed the violation and, if so, whether the violation is of such a nature that the youth should be returned to a youth correctional facility or whether a different plan for custody and supervision of the youth should be pursued by the department of corrections.

(2) Pending the hearing on a violation and pending the department’s decision, a youth may not be detained except when the youth’s detention or care is required to protect the person or property of the youth or of others or when the youth may abscond or be removed from the community. The department shall determine the place and manner of detention pursuant to 41-5-348 and is responsible for the cost of the detention. Procedures for taking a youth into custody and detention of a youth charged with violation of the youth’s parole agreement are as provided in 41-5-321.

(3) The youth, upon advice of an attorney, may waive the right to a hearing.

(4) With regard to this hearing, the youth must be given:

(a) written notice of the alleged violation of the parole agreement, including notice of the purpose of the hearing;

(b) a disclosure of the evidence against the youth and the facts constituting the alleged violation;

(c) the opportunity to be heard in person or by interactive video transmission and to present witnesses and documentary evidence to controvert the evidence against the youth and to show that there are compelling reasons that justify or mitigate the violation;

(d) the opportunity to have the hearings officer subpoena witnesses;



(e) the right to confront and cross-examine adverse witnesses in person or by means of interactive video transmission;

(f) the right to be represented by an attorney;

(g) a record of the hearing; and

(h) notice that a written statement as to the evidence relied upon in reaching the final decision and the reasons for the final decision will be provided by the hearings officer.

(5) The department shall provide a hearings officer to conduct the hearing. The department shall adopt rules necessary to effect a prompt and full review.

(6) (a) ~~If~~ *The hearings officer shall make a decision for the placement of the youth if:*

(i) *after a hearing* the hearings officer finds, by a preponderance of the evidence, that the youth did in fact commit the violation, ~~the hearings officer shall make a decision for the placement of the youth;~~ or

(ii) *the youth acknowledges, either during the hearing or by written waiver, upon advice of an attorney, that the youth has violated the terms of the youth's parole agreement.*

(b) In making ~~this~~ *a placement* decision, the hearings officer may consider mitigating or aggravating circumstances.

(c) The youth or the youth's attorney may appeal the hearings officer's decision to the department director. The appeal must be made in writing within 5 days of the hearing. The department director or designee shall grant or deny the appeal within 5 days of receipt of the appeal.

(7) The youth may appeal the decision of the department director to the district court of the county in which the hearing was held by serving and filing a notice of appeal with the court within 10 days of the department director's decision. The youth may obtain a written transcript of the hearing from the department by giving written notice of appeal. The district court, upon receipt of a notice of appeal, shall order the department to promptly certify to the court a record of all proceedings before the department and shall proceed to a prompt hearing on the appeal based upon the record on appeal. The decision of the department may not be altered except for abuse of discretion or manifest injustice.

(8) If the decision made under subsection (6) is to return the youth to a youth correctional facility and the youth appeals that decision, the youth shall await the outcome of the appeal at the facility.

(9) If a decision is made under subsection (6) to revoke the parole of a youth who was placed in and released from an alternative facility under 41-5-355 because of overcrowding in a state youth correctional facility, the youth may be placed in a state youth correctional facility if the state youth correctional facility is no longer overcrowded."

**Section 2. Effective date.** [This act] is effective July 1, 2003.

Approved April 17, 2003

**CHAPTER NO. 383**

[HB 179]

AN ACT REVISING THE LAWS RELATING TO CAPTIVE INSURANCE COMPANIES; PROVIDING FOR SPONSORED CAPTIVE AND BRANCH CAPTIVE INSURANCE COMPANIES; ALLOWING RECIPROCAL INSURERS TO BE AN ASSOCIATION CAPTIVE INSURANCE COMPANY; ALLOWING AN ASSOCIATION CAPTIVE INSURANCE COMPANY OR INDUSTRIAL INSURED GROUP FORMED AS A STOCK OR MUTUAL CORPORATION TO CONVERT TO OR MERGE WITH A RECIPROCAL INSURER; ALLOWING A CAPTIVE INSURANCE COMPANY TO PROVIDE EXCESS WORKERS' COMPENSATION INSURANCE, PROPERTY INSURANCE, CASUALTY INSURANCE, LIFE INSURANCE, DISABILITY INCOME INSURANCE, AND HEALTH INSURANCE COVERAGE; DEFINING "DISABILITY INCOME INSURANCE"; REQUIRING CAPTIVE INSURANCE COMPANIES TO FILE REPORTS WITH THE COMMISSIONER OF INSURANCE; REQUIRING CAPTIVE INSURANCE AND BRANCH BUSINESS COMPANIES TO PAY A TAX ON PREMIUMS; REQUIRING A CAPTIVE INSURANCE COMPANY TO OBTAIN A CERTIFICATE FROM THE COMMISSIONER OF INSURANCE BEFORE ITS FORMATION; AMENDING SECTIONS 33-28-101, 33-28-102, 33-28-104, 33-28-105, 33-28-107, 33-28-108, 33-28-201, AND 33-28-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Sponsored captive insurance company.** (1) One or more sponsors may form a sponsored captive insurance company.

(2) A sponsored captive insurance company formed or licensed under the provisions of this chapter may establish and maintain one or more protected cells to insure risks of one or more participants, subject to the following conditions:

(a) The shareholders of the sponsored captive insurance company must be limited to its participants and sponsors.

(b) Each protected cell must be accounted for separately on the books and records of the sponsored captive insurance company to reflect the financial condition and result of operations of the protected cell, including but not limited to the net income or loss, dividends or other distributions to participants, and any other factor provided in the participant contract or required by the commissioner.

(c) The assets of a protected cell may not be chargeable with liabilities arising from any other insurance business of the sponsored captive insurance company.

(d) A sale, exchange, or other transfer of assets may not be made by a sponsored captive insurance company among any of its protected cells without the consent of the participants of each affected protected cell.

(e) A sale, exchange, transfer of assets, dividend, or distribution may not be made from a protected cell to a sponsor or a participant without the commissioner's prior written approval, which may not be given if the sale, exchange, transfer, dividend, or distribution would result in insolvency or impairment with respect to the protected cell.

(f) Each sponsored captive insurance company shall file annually with the commissioner any financial reports required by the commissioner and shall include, without limitation, accounting statements detailing the financial experience of each protected cell.

(g) Each sponsored captive insurance company shall notify the commissioner in writing within 20 business days from the time that a protected cell has become impaired or insolvent or is otherwise unable to meet its claim or expense obligations.

(h) A participant contract may not take effect without the commissioner's prior written approval.

(i) An addition of each new protected cell or the withdrawal of any participant of an existing protected cell constitutes a change in the business plan of the sponsored captive insurance company and may not be effective without the commissioner's prior written approval.

(j) The business written by a sponsored captive insurance company, with respect to each cell, must be:

(i) fronted by an insurance company licensed under the laws of any state;

(ii) reinsured by a reinsurer authorized or approved by the commissioner; or

(iii) secured by a trust fund in the United States for the benefit of policyholders and claimants, which must be funded by an irrevocable letter of credit or other asset that is acceptable to the commissioner, and with the following requirements:

(A) the amount of the security provided by the trust fund may not be less than the reserves associated with the liabilities that are not fronted or reinsured, including but not limited to reserves for losses that are allocated for loss adjustment expenses, incurred but not reported losses, and unearned premiums for business written through the participant's protected cell;

(B) the commissioner may require the sponsored captive insurance company to increase the funding of any trust;

(C) if the form of security in the trust is a letter of credit, the letter of credit must be established, issued, or confirmed by a bank chartered in this state, a member of the federal reserve system, or a bank chartered by another state if that state-chartered bank is acceptable to the commissioner; and

(D) the trust and trust instrument must be in a form and with terms approved by the commissioner.

**Section 2. Qualification of sponsors.** A sponsor of a sponsored captive insurance company must be an insurer licensed under the laws of any state, a reinsurer licensed under the laws of any state, a captive insurance company formed or licensed under this chapter, or an insurance producer licensed under chapter 17 of this title and approved by the commissioner.

**Section 3. Delinquency of sponsored captive insurance company.** If delinquency proceedings have been taken against a sponsored captive insurance company:

(1) the assets of a protected cell may not be used to pay any expenses other than those attributable to the protected cell; and

(2) the capital and surplus of the sponsored captive insurance company must be available at all times to pay expenses of or claims against the sponsored captive insurance company.

**Section 4. Participants in sponsored captive insurance companies.**

(1) An association, corporation, limited liability company, partnership, trust, or other business entity may be a participant in a sponsored captive insurance company.

(2) A sponsor may be a participant in a sponsored captive insurance company.

(3) A participant is not required to be a shareholder of a sponsored captive insurance company or its affiliate.

(4) A participant shall insure only its own risks through a sponsored captive insurance company.

**Section 5. Excess workers' compensation insurance — reinsurance of self-insured plans.** (1) A captive insurance company may provide excess workers' compensation insurance to its parent and affiliated companies, unless the laws of the state having jurisdiction over the transaction prohibit providing the insurance.

(2) A captive insurance company may reinsure workers' compensation of a qualified self-insured plan of its parent and affiliated companies.

**Section 6. Conversion to or merger with reciprocal insurer.** (1) An association captive insurance company or industrial insured group formed as a stock or mutual corporation 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 upon 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 7. Disability income insurance.** "Disability income insurance" means an individual or group policy of insurance that primarily provides payment to or for the benefit of the policyholder or certificate holder based, in whole or in part, upon lost wages or other earned income or business or financial losses as a result of an inability to work due to sickness, injury, or a combination of sickness and injury.

**Section 8.** 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 organization by virtue of common ownership, control, operation, or management.

(2) "Association" means any legal association of sole proprietorships, corporations, partnerships, limited liability companies, or associations that has been in continuous existence for at least 1 year *unless the 1-year requirement is waived by the commissioner*; the member organizations 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; ~~or~~

(b) has complete voting control over an association captive insurance company incorporated as a mutual insurer; *or*

(c) *constitutes all of the subscribers of an association captive insurance company formed as a reciprocal insurer.*

(3) "Association captive insurance company" means any company that insures risks of the member organizations of an association and their affiliated companies.

(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 licensed 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.

~~(4)~~(7) "Captive insurance company" means any pure captive insurance company, association captive insurance company, *sponsored captive insurance company*, or industrial insured captive insurance company formed or licensed under the provisions of this chapter.

(8) "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.

(9) "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 perincident or aggregate limit established by the commissioner.

(10) "Foreign captive insurance company" means any captive insurance company formed under the laws of any jurisdiction other than this state.

~~(5)~~(11) "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.

~~(6)~~(12) "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.

~~(7)~~(13) "Industrial insured group" means any group of industrial insureds that collectively:

(a) 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

(b) has complete voting control over an industrial insured captive insurance company incorporated as a mutual insurer.

~~(8)~~(14) "Member organization" means a sole proprietorship, corporation, partnership, or association that belongs to an association.

~~(9)~~(15) "Parent" means a corporation, partnership, or individual that directly or indirectly owns, controls, or holds with power to vote more than 50% of the outstanding voting securities of a pure captive insurance company.

(16) "Participant" means an entity, as enumerated in [section 4], and any affiliates of the entity that are insured by a sponsored captive insurance company in which the losses of the participant are limited through a participant contract to the participant's pro rata share of the assets of one or more protected cells identified in the participant contract.

(17) "Participant contract" means a contract by which a sponsored captive insurance company insures the risks of a participant and limits the losses of each participant in the contract.

(18) "Protected cell" means a separate account established by a sponsored captive insurance company formed or licensed under the provisions of this chapter, in which assets are maintained for one or more participants in accordance with the terms of one or more participant contracts to fund the liability of the sponsored captive insurance company with respect to the participants as set forth in the participant contracts.

~~(10)~~ (19) "Pure captive insurance company" means any company that insures risks of its parent and affiliated companies.

(20) "Sponsor" means any entity that meets the requirements of [sections 1 and 2] 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 sponsored captive insurance company.

(21) "Sponsored 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 licensed 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 sponsored captive insurance company's general account."

**Section 9.** Section 33-28-102, MCA, is amended to read:

**"33-28-102. Licensing — authority.** (1) A captive insurance company, when permitted by its articles of incorporation, charter, or other organizational document, may apply to the commissioner for a license to provide ~~property and casualty insurance~~ *property insurance, casualty insurance, life insurance, disability income insurance, and health insurance coverage as defined in 33-22-140, except that:*

(a) a pure captive insurance company may not insure any risks other than those of its parent and affiliated companies;

(b) an industrial insured captive insurance company may not insure any risks other than those of the industrial insureds that comprise the industrial insured group and their affiliated companies;

(c) an association captive insurance company may not insure any risks other than those of the member organizations of its association or their affiliated companies; ~~and~~

(d) a captive insurance company may not:

(i) provide personal lines of insurance, including but not limited to motor vehicle or homeowner's insurance coverage or any component of those coverages;

(ii) accept or cede reinsurance except as provided in 33-28-203; or

(iii) provide health ~~or disability insurance~~ *or life insurance coverage, unless the captive insurance company is a pure captive insurance company; or* and

~~(iv) provide workers' compensation insurance in any manner or form.~~

(e) a sponsored captive insurance company may not insure any risks other than those of its participants.

(2) A captive insurance company may not do any insurance business in this state unless:

(a) it first obtains from the commissioner a license authorizing it to do insurance business in this state;

(b) its board of directors *or a reciprocal insurer's subscribers' advisory committee* holds at least one meeting each year in this state; and

(c) it maintains its principal place of business in this state.

(3) (a) Before receiving a license, a captive insurance company shall:

(i) *with respect to a captive insurance company formed as a corporation:*

(A) file with the commissioner a certified copy of its charter and bylaws, a statement under oath of its president and secretary showing its financial condition, and any other statements or documents required by the commissioner; and

~~(B)~~ (B) submit to the commissioner for approval a description of the coverages, deductibles, coverage limits, and rates, together with any additional information that the commissioner may reasonably require;

(ii) *with respect to a captive insurance company formed as a reciprocal insurer:*

(A) file with the commissioner a certified copy of the power of attorney of its attorney-in-fact, a certified copy of its subscribers' agreement, a statement under oath of its attorney-in-fact showing its financial condition, and any other statements or documents required by the commissioner; and

(B) submit to the commissioner for approval a description of the coverages, deductibles, coverage limits, and rates, together with any additional information that the commissioner may reasonably require.

(b) In the event of any subsequent material change in any ~~item~~ *of the items* in the description provided for in subsection (3)(a)~~(ii)~~, the captive insurance company shall submit to the commissioner for approval an appropriate revision and may not offer any additional kinds of insurance until a revision of the description is approved by the commissioner. The captive insurance company shall inform the commissioner of any change in rates within 30 days of the adoption of the change.

(c) In addition to the information required by subsections (3)(a) and (3)(b), each applicant captive insurance company shall file with the commissioner evidence of the following:

(i) the amount and liquidity of its assets relative to the risks to be assumed;

(ii) the adequacy of the expertise, experience, and character of the person or persons who will manage it;

(iii) the overall soundness of its plan of operation;

(iv) the adequacy of the loss prevention programs of its parent, member organizations, or industrial insureds as applicable; and

(v) any other factors considered relevant by the commissioner in ascertaining whether the proposed captive insurance company will be able to meet its policy obligations.

(d) *In addition to the information required by this section, each applicant that is a sponsored captive insurance company shall file with the commissioner the following:*

(i) *a business plan demonstrating how the applicant will account for the loss and expense experience of each protected cell at a level of detail found to be sufficient by the commissioner and how it will report the experience to the commissioner;*



(ii) a statement acknowledging that all financial records of the sponsored captive insurance company, including records pertaining to any protected cells, must be made available for inspection or examination by the commissioner or the commissioner's designated agent;

(iii) all contracts or sample contracts between the sponsored captive insurance company and any participants; and

(iv) evidence that expenses will be allocated to each protected cell in a fair and equitable manner.

~~(d)~~(e) Information submitted pursuant to this subsection (3) must remain confidential and may not be made public by the commissioner or an employee or agent of the commissioner without the written consent of the company, except that:

(i) the information may be discoverable by a party in a civil action or contested case to which the captive insurance company that submitted the information is a party, upon a showing by the party seeking to discover the information that the information sought is relevant to and necessary for the furtherance of the action or case, the information sought is unavailable from other nonconfidential sources, and a subpoena issued by a judicial or administrative officer of competent jurisdiction has been submitted to the commissioner;

(ii) the commissioner may, in the commissioner's discretion, disclose the information to a public officer having jurisdiction over the regulation of insurance in another state or to a public official of the federal government, as long as the public official agrees in writing to maintain the confidentiality of the information and the laws of the state in which the public official serves, if applicable, require the information to be and to remain confidential.

(4) (a) Each captive insurance company shall pay to the commissioner a nonrefundable fee of \$200 for the examining, investigating, and processing of its application for license, and the commissioner is authorized to retain legal, financial, and examination services from outside the department, the reasonable cost of which may be charged to the applicant.

(b) The provisions of Title 33, chapter 1, part 4, apply to examinations, investigations, and processing conducted under the authority of this section. In addition, each captive insurance company shall pay a license fee for the year of registration and a renewal fee for each subsequent year of \$300.

(5) If the commissioner is satisfied that the documents and statements that the applicant captive insurance company has filed comply with the provisions of this chapter and applicable provisions of Title 33, the commissioner may grant a license authorizing the company to do insurance business in this state. The license is effective until March 1 of each year and may be renewed upon proper compliance with this chapter."

**Section 10.** Section 33-28-104, MCA, is amended to read:

**"33-28-104. Minimum capital surplus — letter of credit.** (1) A captive insurance company may not be issued a license unless it possesses and maintains unimpaired paid-in capital and surplus of:

(a) in the case of a pure captive insurance company, not less than \$250,000;

(b) in the case of an industrial insured captive insurance company, not less than \$500,000; ~~and~~

(c) in the case of an association captive insurance company, not less than \$750,000;

(d) in the case of a sponsored captive insurance company, not less than \$1 million; or

(e) in the case of a branch captive insurance company, not less than the applicable amount of capital and surplus required in subsections (1)(a) through (1)(d), as determined based upon the organizational form of the foreign captive insurance company.

(2) The commissioner may require additional capital and surplus based upon the type, volume, and nature of insurance business transacted.

(3) Capital and surplus may be in the form of cash, *cash equivalent*, or an irrevocable letter of credit issued by a bank chartered by the state of Montana or a member bank of the federal reserve system and approved by the commissioner.

(4) *Despite the requirements of subsection (1), a captive insurance company organized as a reciprocal insurer under this chapter may not be issued a license unless it possesses and maintains unimpaired paid-in capital and surplus of \$1 million.*

(5) *In the case of a branch captive insurance company, security in an amount not less than the minimum capital and surplus required in this section must be jointly held by the commissioner and the branch captive insurance company in a bank of the federal reserve system approved by the commissioner.*"

**Section 11.** Section 33-28-105, MCA, is amended to read:

**"33-28-105. Formation of captive insurance companies.** (1) A pure captive insurance company or a sponsored captive insurance company must be incorporated as a stock insurer with its capital divided into shares and held by the stockholders.

(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; ~~or~~

(b) incorporated as a mutual insurer without capital stock, the governing body of which is elected by the member organizations of its association or associations; or

(c) *organized as a reciprocal insurer under Title 33, chapter 5.*

(3) A captive insurance company incorporated or organized in this state may not have less than three incorporators, at least one of whom must be a resident of this state.

(4) ~~(a) A captive insurance company shall deliver to the commissioner a draft of its proposed articles of incorporation. The commissioner shall examine the proposed articles of incorporation, and if the commissioner finds that the proposed articles comply with this chapter and the applicable provisions of Title 33, the commissioner shall approve, in writing, the draft articles. In the case of a captive insurance company formed as a corporation and before the articles of incorporation are transmitted to the secretary of state, the incorporators shall file a copy of the proposed articles of incorporation and a petition with the commissioner requesting the commissioner to issue a certificate that finds that the establishment and maintenance of the proposed corporation 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 incorporators;*

*(ii) the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors; and*

*(iii) any other factors that the commissioner considers appropriate.*

(b) If the commissioner *does not issue a certificate or finds that the proposed articles of incorporation 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 articles of incorporation and shall return the draft to the proposed incorporators, together with a written statement explaining the refusal.*

(c) ~~The~~ *If the commissioner issues a certificate and approves the draft articles of incorporation, the commissioner shall forward the certificate and an approved draft of articles of incorporation to the proposed incorporators. The incorporators shall prepare two sets of the approved articles of incorporation and shall file one set of articles of incorporation 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) At least one of the members of the board of directors of a captive insurance company must be a resident of this state.

(7) (a) A captive insurance company *formed as a corporation* has the privileges and is subject to the provisions of general corporation law, as well as the applicable provisions contained in this chapter.

(b) In the event of conflict between the provisions of general corporation law 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) *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. If a reciprocal insurer is determined to be subject to other provisions of Title 33, chapter 5, the other provisions of chapter 5 are not applicable to a reciprocal captive insurance company formed under this chapter unless those provisions of chapter 5 are expressly made applicable to captive insurance companies.*

(d) *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.*

~~(e)(9)~~ *Except as provided in [section 6], the provisions of Title 33 pertaining to mergers, consolidations, conversions, mutualizations, and redomestications apply in determining the procedures to be followed by captive insurance companies in carrying out any of those transactions.*

*(10) 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 licensing and maintenance of the branch operation will promote the general good of the state. The foreign captive insurance company may apply to the secretary of state for a certificate of authority to transact business in this state after the commissioner's certificate is issued."*

**Section 12.** Section 33-28-107, MCA, is amended to read:

**"33-28-107. Reports and statements.** (1) A captive insurance company is not required to make an annual report except as provided in this section.

(2) (a) On or before March 1 of each year, each captive insurance company shall submit to the commissioner a report of its financial condition in a form and manner as required by the commissioner, verified by oath of two of its executive officers.

(b) Each captive insurance company shall report using generally accepted accounting principles, unless the commissioner requires the use of statutory accounting principles, with any necessary or useful modifications or additions required by the commissioner. The commissioner may also require the report to be supplemented by additional information.

*(c) On or before March 1 of each year, each branch captive insurance company shall submit to the commissioner a copy of all reports and statements required to be filed under the laws in which the foreign captive insurance company is formed, verified by oath of two of its executive officers. If the commissioner is satisfied that the annual report filed by the foreign captive insurance company in its domiciliary jurisdiction provides adequate information concerning the financial condition of the foreign captive insurance company, the commissioner may waive the requirement for completion of the captive annual statement for business written in the foreign jurisdiction."*

**Section 13.** Section 33-28-108, MCA, is amended to read:

**"33-28-108. Examinations and investigations.** (1) (a) At least once in 3 years, or more frequently if the commissioner considers it prudent, the commissioner or some competent person appointed by the commissioner shall visit each captive insurance company and thoroughly inspect and examine its affairs to ascertain its financial condition, its ability to fulfill its obligations, and whether it has complied with the provisions of this chapter.

(b) The commissioner, upon application and in the commissioner's discretion, may enlarge the 3-year period to 5 years if the captive insurance company is:

(i) subject to a comprehensive annual audit during the 5-year period of a scope satisfactory to the commissioner; and

(ii) the audit is conducted by independent auditors approved by the commissioner.

(c) 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) 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.

(5) (a) *Except as provided in subsection (5)(b), the provisions of this section apply to all business written by a captive insurance company.*

(b) *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)(c) to the satisfaction of the commissioner.*"

**Section 14.** Section 33-28-201, MCA, is amended to read:

**"33-28-201. Tax on premiums collected.** (1) (a) Each captive insurance company shall pay to the commissioner, on or before March 1 of each year, a tax on the direct premiums collected or contracted for on policies or contracts of insurance written by the captive insurance company in this state during the year ending December 31, after deducting from the direct premiums subject to the tax the amounts paid to policyholders as return premiums, including dividends on unabsorbed premiums or premium deposits returned or credited to policyholders.

(b) The tax on direct premiums collected in this state must be calculated as follows:

(i) 0.4% on the first 20 million dollars;

(ii) 0.3% on the next 20 million dollars;

(iii) 0.2% on the next 20 million dollars; and

(iv) 0.075% on each subsequent dollar collected.

(2) (a) Each captive insurance company shall pay to the commissioner on or before March 1 of each year a tax on assumed reinsurance premiums.

(b) A reinsurance tax does not apply to premiums for risks or portions of risks that are subject to taxation on a direct basis pursuant to subsection (1).

(c) A reinsurance premium tax is not payable in connection with the receipt of assets in exchange for the assumption of loss reserves and other liabilities of another insurer under common ownership and control if the transaction is part of a plan to discontinue the operations of the other insurer and if the intent of the parties to the transaction is to renew or maintain the business with the captive insurance company.

(d) The amount of the reinsurance tax must be calculated as follows:

(i) 0.225% on the first 20 million dollars of assumed reinsurance premiums;

(ii) 0.150% on the next 20 million dollars of assumed reinsurance premiums; and

(iii) 0.050% on each subsequent dollar of assumed reinsurance premiums.

(3) If the aggregate taxes to be paid by a captive insurance company calculated under subsections (1) and (2) amount to less than \$5,000 in any year, the captive insurance company shall pay a tax of \$5,000 for that year.

(4) Two or more captive insurance companies under common ownership and control must be taxed as though they were a single captive insurance company.

(5) For the purposes of this section, "common ownership and control" means:

(a) in the case of stock corporations, the direct or indirect ownership of 80% or more of the outstanding voting stock of two or more corporations by the same shareholder or shareholders; and

(b) in the case of mutual corporations, the direct or indirect ownership of 80% or more of the surplus and the voting power of two or more corporations by the same member or members.

(6) *Only the branch business of a branch captive insurance company is subject to taxation under the provisions of this section.*

**Section 15.** Section 33-28-207, MCA, is amended to read:

**"33-28-207. Applicable laws.** (1) *The definitions of property insurance provided in 33-1-210, casualty insurance provided in 33-1-206, life insurance provided in 33-1-208, health insurance coverage provided in 33-22-140, and disability income insurance provided in [section 7], the provisions relating to supervision, rehabilitation, and liquidation of insurance companies as provided for in Title 33, chapter 2, part 13, and the provisions of 33-18-201, 33-18-203, 33-18-205, and 33-18-242 apply to captive insurance companies.*

(2) This chapter may not be construed as exempting a captive insurance company, its parent, or affiliated companies from compliance with the laws governing workers' compensation insurance.

(3) Except as expressly provided in this chapter, the provisions of Title 33 do not apply to captive insurance companies."

**Section 16. Codification instruction.** (1) [Sections 1 through 6] are intended to be codified as an integral part of Title 33, chapter 28, and the provisions of Title 33, chapter 28, apply to [sections 1 through 6].

(2) [Section 7] is intended to be codified in Title 33, chapter 1, part 2, and the provisions of Title 33, chapter 1, part 2, apply to [section 7].

**Section 17. Coordination instruction.** If House Bill No. 145 is passed and approved and includes [section 5] defining "disability income insurance",

then [section 7 of this act] is void and the reference to “[section 7]” in [section 15 of this act], amending 33-28-207, is changed to “[section 5 of House Bill No. 145]”.

**Section 18. Effective date.** [This act] is effective on passage and approval.

Approved April 18, 2003

## CHAPTER NO. 384

[HB 183]

AN ACT REQUIRING 45-DAY OR 60-DAY NOTICES FOR HEALTH INSURANCE POLICY RATE CHANGES OR BENEFIT MODIFICATIONS AND PROVIDING FOR DELIVERY OF THE NOTICES; REQUIRING NOTICE FOR CANCELLATION FOR NONPAYMENT OF GROUP HEALTH INSURANCE PREMIUMS; REVISING REQUIREMENTS REGARDING CERTIFICATES OF CREDITABLE COVERAGE; AMENDING SECTIONS 33-22-107, 33-22-122, 33-22-141, 33-22-142, 33-30-1007, 33-31-111, AND 33-35-306, MCA; REPEALING SECTION 33-30-307, 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 33-22-107, MCA, is amended to read:

**“33-22-107. Premium increase restriction — exception — notice of rate increase and policy changes.** (1) An insurer or a health service corporation that issues a policy, certificate, or membership contract covering a resident of this state may not increase a premium in an individual’s or an individual’s group disability insurance policy more frequently than once during a 12-month period unless failure to increase the premium more frequently than once during the 12-month period would:

(a) place the insurer in violation of the laws of this state; or

(b) cause the financial impairment of the insurer to the extent that further transaction of insurance by the insurer injures or is hazardous to its policyholders or to the public.

(2) Subsection (1) does not apply to a premium increase necessitated by a state or federal law, court decision, or rule adopted by an agency of competent jurisdiction of the state or federal government.

(3) (a) *Every health insurance issuer delivering or issuing for delivery group or individual health insurance coverage shall give a group policyholder at least 60 days’ advance notice and an individual policyholder at least 45 days’ advance notice of a change in rates or a change in terms or benefits.*

(b) *A notice given under this subsection (3) must be delivered in the following manner:*

(i) *it must be mailed to the policyholder’s last-known address as shown by the records of the insurer; and*

(ii) *if a health insurance issuer bills any certificate holder directly at the certificate holder’s home address for premiums, the notice must be mailed by the health insurer directly to each certificate holder’s last-known home address.*

(c) *If the health insurance issuer fails to provide the notice required by this subsection (3), the coverage must remain in effect at the existing rate with the*

*existing benefits until the full notice period has expired or until the effective date of the replacement coverage obtained by the insured, whichever occurs first.”*

**Section 2. Notice required for cancellation for nonpayment of group health insurance.** (1) A health insurance issuer shall provide at least 15 days prior notification of cancellation for nonpayment of premium for group health insurance coverage.

(2) The notice must be sent to the policyholder at the policyholder's last-known address and must specify the date of cancellation of coverage. The insurer shall attach a properly executed proof of mailing to this notice and maintain a copy of the proof of mailing in its records.

(3) The health insurance issuer shall hold for processing of payment any claims received during the 15-day notification period for nonpayment of premium for group health insurance coverage. Upon receipt of the premium, claims held for the 15-day notification period must be processed for payment.

(4) The policy continues in full force and effect, subject to the requirements of subsection (3), until the proper 15-day notice has been given, unless the coverage has already been replaced.

(5) The 15-day period begins to run from the date of the proof of mailing.

(6) The issuer may collect premiums for any time period that the coverage remains in effect.

(7) When coverage is actually canceled, notice must also be mailed to all certificate holders at:

- (a) their last-known home addresses if available; or
- (b) the business address of the group policyholder.

(8) The notice of cancellation to certificate holders must be separate from the certificate of creditable coverage required in 33-22-142, although it may be mailed simultaneously with the certificate.

**Section 3.** Section 33-22-122, MCA, is amended to read:

**“33-22-122. Contents of notice — proof — limitation on recovery — exemptions.** (1) (a) The notice of cancellation ~~shall~~ *must* state:

(i) the amount of the premium, installment, or interest due on ~~such~~ *the* policy;

(ii) the place where it must be paid; and

(iii) the name and address of the person or company to which the premium is payable.

(b) The notice must also state that unless the premium or other sums are paid to the company or its insurance producer, the policy will lapse or be forfeited.

(2) “Policyowner”, as used in this section, means the owner of the policy or any other person designated as the person to receive premium notices, as shown by the records of the insurance company.

(3) The affidavit of any responsible officer, clerk, or insurance producer of the insurance company authorized to mail the notice that it is the standard practice of the company to mail to policyowners the notice required by this section is prima facie evidence that the notice has been duly given.



(4) ~~No~~ An action may *not* be maintained to recover under a lapsed or forfeited policy on the ground that the insurance company failed to comply with this section unless the action is instituted within 2 years from *the* due date upon which default was made in paying the premium, installment, or interest for which lapse or forfeiture is claimed.

(5) Section 33-22-121 does not apply to:

(a) group or group-type policies; *or*

(b) industrial life or industrial disability policies; ~~or~~

~~(c) policies upon which premiums are payable monthly or at more frequent intervals."~~

**Section 4.** Section 33-22-141, MCA, is amended to read:

**"33-22-141. Crediting previous coverage.** (1) (a) A period of creditable coverage may not be counted, with respect to enrollment of an individual under a group health plan, if there was a 63-day break in coverage, ~~during which the individual was not covered under any creditable coverage.~~

(b) *The 63-day period provided for in subsection (1)(a) must be counted from the date that the certificate of creditable coverage was issued to the individual.*

(2) The time that an individual is in a waiting period for coverage under a group health plan or for group health insurance coverage or is in an affiliation period, as defined in 33-31-102, may not be considered in determining the continuous period under subsection (1).

(3) Except as provided in subsection (4), for the purposes of applying 33-22-514, a group health plan or a health insurance issuer offering group health insurance coverage shall count a period of creditable coverage without regard to the specific benefits coverage during the period.

(4) (a) A group health plan or a health insurance issuer offering group health insurance may elect to apply the provisions of 33-22-514 based on coverage of benefits within each of several classes or categories of benefits specified in regulations implementing Public Law 104-191, rather than as provided under subsection (3). If electing to apply the provisions of 33-22-514 pursuant to this subsection (4), a group health plan or a health insurance issuer shall:

(i) make the election on a uniform basis for all participants and beneficiaries; and

(ii) count a period of creditable coverage with respect to any class or category of benefits if any level of benefits is covered within the class or category.

(b) In the case of an election under this subsection (4), a group health plan shall:

(i) prominently state in a disclosure statement concerning the group health plan to each enrollee at the time of enrollment that the group health plan has made an election; and

(ii) include a description of the effect of the election in the statement.

(c) In the case of an election under this subsection (4), a health insurance issuer shall:

(i) prominently state in a disclosure statement concerning the health insurance coverage to each employer at the time of the offer or sale of the health insurance coverage that the health insurance issuer has made an election; and

(ii) include a description of the effect of the election in the statement.

(5) Periods of creditable coverage with respect to an individual must be established through presentation of certifications described in 33-22-142 or in such other manner as may be specified in regulations implementing Public Law 104-191."

**Section 5.** Section 33-22-142, MCA, is amended to read:

**"33-22-142. Certification of creditable coverage.** (1) A group health plan and a health insurance issuer offering group health insurance coverage shall ~~provide~~ *issue* the certification described in subsection (3):

(a) ~~at the time that~~ *within 10 days after* an individual ceases to be covered under the group health plan or otherwise becomes covered under a COBRA continuation provision;

(b) *not later than 10 days after cancellation for nonpayment of premium is effective pursuant to the provisions of [section 2] or after termination of coverage for any other reason;*

~~(b)~~(c) in the case of an individual becoming covered under a COBRA continuation provision, at the time that the individual ceases to be covered under a COBRA continuation provision; and

~~(c)~~(d) at the request on behalf of an individual made not later than 24 months after the date of termination of the coverage described in subsection (1)(a) or ~~(1)(b)~~ (1)(c), whichever is later.

(2) The certification pursuant to subsection (1)(a) may be provided, to the extent practicable, at a time consistent with notices required under any applicable COBRA continuation provision.

(3) Certification is the written:

(a) certification of the period of creditable coverage of the individual under a group health plan and the coverage under the COBRA continuation provision;

(b) certification of the waiting period, if any, and affiliation period, as defined in 33-31-102, if applicable, imposed with respect to the individual for any coverage under a group health plan; ~~and~~

(c) *certification of the date of issuance of the certificate specified on the form;* and

~~(c)~~(d) notification to the individual of:

(i) the individual's option to apply to the Montana comprehensive health association, provided for in 33-22-1503, for an association portability plan, as defined in 33-22-1501, within 63 days of ~~termination of creditable coverage~~ *issuance of a certificate of creditable coverage;*

(ii) the individual's conversion rights;

(iii) the availability of COBRA continuation coverage;

(iv) the telephone number and address of the Montana comprehensive health association; and

(v) other notification as determined necessary and in the form prescribed by rule by the commissioner.

(4) To the extent that medical care under a group health plan consists of group health insurance coverage, a group health plan satisfies the certification requirement of this section if the health insurance issuer offering the coverage provides the certification in accordance with this section.

(5) In the case of an election described in 33-22-141 by a group health plan or health insurance issuer, if the group health plan or health insurance issuer enrolls an individual for coverage under the group health plan and the individual provides a certification of coverage of the individual, the entity that issued the certification shall upon request of the group health plan or health insurance issuer promptly disclose information on coverage of classes and categories of health benefits available under the certified coverage. The entity may charge the requesting group health plan or health insurance issuer the reasonable cost of disclosing the information.

(6) This section applies to health insurance coverage offered by a health insurance issuer in the individual market in the same manner as it applies to health insurance coverage offered by a health insurance issuer in connection with a group health plan in the group market.”

**Section 6.** Section 33-30-1007, MCA, is amended to read:

**“33-30-1007. Conversion on termination of eligibility.** (1) The group hospital or medical service plan contract issued or renewed by a health service corporation after October 1, 1981, must contain a provision that if the insurance or any portion of it on a person or a person’s dependents or family members covered under the policy ceases because of termination of the person’s employment or of a person’s membership in the class or classes eligible for coverage under the policy as a result of an employer discontinuing the employer’s business or as a result of an employer discontinuing the policy issued by the health service corporation and not providing for any other group disability insurance or plan, a person must, if the person has been insured for a period of 3 months and if the person is not insured under another major medical disability insurance policy or plan, be entitled to have issued to the person by the insurer, without evidence of insurability, an individual policy of hospital or medical service insurance on the person or the person’s dependents or family members. Application for the individual policy must be made and the first premium tendered to the insurer within 31 days after the termination of group coverage.

(2) The individual policy must, at the option of the insured, be on any of the forms then customarily issued by the insurer to individual policyholders with the exception of those whose eligibility is determined by their affiliation other than by employment with a particular entity. In addition, the health service corporation shall make available a conversion policy as required by subsection (4).

(3) The premium on the individual policy ~~must~~ *may not* be ~~at no~~ more than 200% of the insurer’s then customary rate applicable to the coverage of the individual policy. If the person entitled to conversion under this section has been insured for more than 3 years, the premium may not be more than 150% of the customary rate. The customary rate is that rate that is normally issued for medically underwritten policies without discount for healthy lifestyles.

(4) The health service corporation shall make available an individual conversion policy that provides the level of benefits provided by its lowest cost basic health benefit plan, as defined in 33-22-1803. If the insurer is not a small employer carrier under chapter 22, part 18, the insurer shall make available an individual conversion policy that provides equivalent benefits to a basic health benefit plan. The conversion rate may not exceed 150% of the highest rate charged for that plan.

(5) *The premium rate for an individual policy converted from a group plan in accordance with the provisions of subsection (3) may not be increased during the first 6 months of coverage of the individual policy.*"

**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 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) Chapter 1, parts 12 and 13, of this title, 33-2-1114, 33-2-1211, 33-2-1212, 33-3-422, 33-3-431, 33-15-308, 33-22-107, 33-22-129, 33-22-131, 33-22-136, 33-22-141, 33-22-142, 33-22-244, 33-22-246, 33-22-247, 33-22-514, 33-22-521, 33-22-523, 33-22-524, 33-22-526, and 33-22-706 apply to health maintenance organizations."

**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 of Title 33:

(a) 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;

(b) Title 33, chapter 1, part 7;

- (c) 33-3-308;
- (d) Title 33, chapter 18, except 33-18-242;
- (e) 33-22-107, 33-22-131, 33-22-134, and 33-22-135; and
- (f) 33-22-525 and 33-22-526.

(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.”

**Section 9. Repealer.** Section 33-30-307, MCA, is repealed.

**Section 10. Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 33, chapter 22, part 5, and the provisions of Title 33, chapter 22, part 5, apply to [section 2].

**Section 11. Effective date — applicability.** [This act] is effective January 1, 2004, and applies to policies or certificates issued or renewed on or after January 1, 2004.

Approved April 17, 2003

## CHAPTER NO. 385

[HB 205]

AN ACT REVISING MONTANA'S INSURANCE PRIVACY LAWS TO COMPLY WITH THE FEDERAL GRAMM-LEACH-BLILEY ACT AND THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996; ALLOWING A LIMITED EXEMPTION FROM THE PRIVACY ACT FOR ENTITIES COVERED BY THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 PRIVACY REGULATIONS; REQUIRING NATIONAL NOTICE FORMS TO REFER TO THE SPECIFIC STATE NOTICE FORM; AUTHORIZING DISCLOSURE OF CERTAIN NONMEDICAL INFORMATION TO A LIENHOLDER, MORTGAGEE, ASSIGNEE, OR LESSOR; AMENDING SECTIONS 33-19-104, 33-19-105, 33-19-202, 33-19-301, 33-19-306, AND 33-19-307, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE.

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

**Section 1.** Section 33-19-104, MCA, is amended to read:

**“33-19-104. Definitions.** As used in this chapter, the following definitions apply:

(1) (a) “Adverse underwriting decision” means any of the following actions with respect to insurance transactions involving insurance coverage that are individually underwritten:

- (i) a declination of insurance coverage;
- (ii) a termination of insurance coverage;

(iii) failure of an insurance producer to apply for insurance coverage with a specific insurance institution that the insurance producer represents and that is requested by an applicant;

- (iv) in the case of a property or casualty insurance coverage:

(A) placement by an insurance institution or insurance producer of a risk with a residual market mechanism, an unauthorized insurer, or an insurance institution that specializes in substandard risks; or

(B) the charging of a higher rate on the basis of information that differs from that which the applicant or policyholder furnished;

(v) in the case of a life, health, or disability insurance coverage, an offer to insure at higher than standard rates.

(b) The following actions are not adverse underwriting decisions, but the insurance institution or insurance producer responsible for their occurrence shall nevertheless provide the applicant or policyholder with the specific reason or reasons for their occurrence:

(i) the termination of an individual policy form on a class or statewide basis;

(ii) a declination of insurance coverage solely because the coverage is not available on a class or statewide basis; or

(iii) the rescission of a policy.

(2) "Affiliate" or "affiliated" means a person who directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with another person.

(3) "Applicant" means a person who seeks to contract for insurance coverage other than a person seeking group insurance that is not individually underwritten.

(4) "Consumer report" means any written, oral, or other communication of information bearing on a natural person's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living that is used or expected to be used in connection with an insurance transaction.

(5) "Consumer reporting agency" means a person who:

(a) regularly engages, in whole or in part, in the practice of assembling or preparing consumer reports for a monetary fee;

(b) obtains information primarily from sources other than insurance institutions; and

(c) furnishes consumer reports to other persons.

(6) "Control", including the terms "controlled by" or "under common control with", means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person.

(7) "Declination of insurance coverage" means a denial, in whole or in part, by an insurance institution or insurance producer of requested insurance coverage.

(8) "Individual" means a natural person who:

(a) regarding property or casualty insurance, is a past, present, or proposed named insured or certificate holder;

(b) regarding life, health, or disability insurance, is a past, present, or proposed principal insured or certificate holder;

- (c) is a past, present, or proposed policyowner;
- (d) is a past or present applicant;
- (e) is a past or present claimant; or
- (f) derived, derives, or is proposed to derive insurance coverage under an insurance policy or certificate subject to this chapter.

(9) "Institutional source" means a person or governmental entity that provides information about an individual to an insurance producer, insurance institution, or insurance-support organization, other than:

- (a) an insurance producer;
- (b) the individual who is the subject of the information; or
- (c) a natural person acting in a personal capacity rather than a business or professional capacity.

(10) "Insurance function" means claims administration, claims adjustment and management, fraud investigation, *fraud prevention*, underwriting, loss control, ratemaking functions, reinsurance, risk management, case management, disease management, quality assessment, quality improvement, provider credentialing verification, utilization review, peer review activities, subrogation, grievance procedures, insurance transactions, ~~and~~ internal administration of compliance and policyholder service functions, *and technical, administrative, or professional services related to the provision of the functions described in this subsection.*

(11) (a) "Insurance institution" means a corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd's insurer, fraternal benefit society, or other person engaged in the business of insurance, including health maintenance organizations, and health service corporations as defined in 33-30-101.

(b) Insurance institution does not include insurance producers or insurance-support organizations.

(12) "Insurance producer" means an insurance producer as defined in 33-17-102 and 33-30-311.

(13) (a) "Insurance-support organization" means a person who assembles or collects information about natural persons for the purpose of providing the information to an insurance institution or insurance producer for insurance transactions, including:

(i) the furnishing of consumer reports or investigative consumer reports to an insurance institution or insurance producer for use in connection with an insurance transaction; or

(ii) the collection of personal information from insurance institutions, insurance producers, or other insurance-support organizations for the purpose of detecting or preventing fraud, material misrepresentation, or material nondisclosure in connection with insurance underwriting or insurance claim activity.

(b) The following persons are not insurance-support organizations for purposes of this chapter: insurance producers, government institutions, medical care institutions, and medical professionals.

(14) "Insurance transaction" means a transaction involving insurance primarily for personal, family, or household needs, rather than for business or professional needs, that entails:

(a) the determination of an individual's eligibility for an insurance coverage, benefit, or payment; or

(b) the servicing of an insurance application, policy, contract, or certificate.

(15) "Investigative consumer report" means a consumer report or portion of a consumer report containing information about a natural person's character, general reputation, personal characteristics, or mode of living obtained through personal interviews with the person's neighbors, friends, associates, acquaintances, or others who may have knowledge concerning this type of information.

(16) "Licensee" means:

(a) an insurance institution, insurance producer, or other person who is licensed or required to be licensed, authorized or required to be authorized, or registered or required to be registered pursuant to this title; or

(b) a surplus lines insurer.

(17) "Medical care institution" means a facility or institution that is licensed to provide health care services to natural persons, including but not limited to health maintenance organizations, home health agencies, hospitals, medical clinics, public health agencies, rehabilitation agencies, and skilled nursing facilities.

(18) "Medical professional" means a person who is licensed or certified to provide health care services to natural persons, including but not limited to a chiropractor, clinical dietitian, clinical psychologist, dentist, nurse, occupational therapist, optometrist, pharmacist, physical therapist, physician, podiatrist, psychiatric social worker, or speech-language pathologist.

(19) "Medical record information" means personal information that:

(a) relates to an individual's physical or mental condition, medical history, medical claims history, or medical treatment; and

(b) is obtained from a medical professional or medical care institution, from the individual, or from the individual's spouse, parent, or legal guardian.

(20) "Person" means a natural person, corporation, association, partnership, or other legal entity.

(21) "Personal information" means any individually identifiable information gathered in connection with an insurance transaction from which judgments can be made about an individual's character, habits, avocations, finances, occupation, general reputation, credit, health, or any other personal characteristics. Personal information includes an individual's name and address and medical record information but does not include privileged information.

(22) "Policyholder" means a person who:

(a) in the case of individual property or casualty insurance, is a present named insured;

(b) in the case of individual life, health, or disability insurance, is a present policyowner; or



(c) in the case of group insurance that is individually underwritten, is a present group certificate holder.

(23) "Pretext interview" means an interview during which a person, in an attempt to obtain information about a natural person, performs one or more of the following acts:

- (a) pretends to be someone else;
- (b) pretends to represent a person not in fact being represented;
- (c) misrepresents the true purpose of the interview; or
- (d) refuses to provide identification upon request.

(24) "Privileged information" means any individually identifiable information that:

- (a) relates to a civil or criminal proceeding involving an individual; and
- (b) is collected in connection with or in reasonable anticipation of a claim for insurance benefits or civil or criminal proceeding involving an individual. Information otherwise meeting the requirements of privileged information under this subsection is considered personal information under this chapter if it is disclosed in violation of 33-19-306.

(25) "Residual market mechanism" means an association, organization, or other entity defined or described in 61-6-144.

(26) "Separate, written authorization" means an individual's written authorization that is:

(a) ~~given to~~ *obtained* by the recipient of personal or privileged information that has been disclosed *to the recipient* pursuant to ~~33-19-306(3) through (22)~~ *33-19-306(10), (11), (14), (15), and (17)*; and

(b) separate from any written authorization obtained by the disclosing insurance institution, insurance producer, or insurance-support organization.

(27) "Termination of insurance coverage" or "termination of an insurance policy" means either a cancellation or nonrenewal of an insurance policy, in whole or in part, for any reason other than the failure to pay a premium as required by the policy.

(28) "Unauthorized insurer" means an insurance institution that has not been granted a certificate of authority by the commissioner to transact the business of insurance in this state."

**Section 2.** Section 33-19-105, MCA, is amended to read:

**"33-19-105. Exemption based on federal medical privacy rules standards for privacy of individually identifiable health information — notice to commissioner required.** (1) ~~If a licensee is subject to and in compliance with a~~ *Beginning on [the effective date of this act], the obligations imposed under this chapter do not apply to a licensee that is a covered entity under the provisions of federal rule regulations that is are part of the federal health insurance portability and accountability privacy rules Health Insurance Portability and Accountability Act of 1996 (HIPAA), 45 CFR, parts 160 and 164, and the federal rule 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 standards for privacy of individually identifiable health information as*

to any use or disclosure of personal information that is covered under the HIPAA privacy regulations, except for the following provisions:

(a) Notices of insurance information practices described as notices 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) Reasons for adverse underwriting decisions 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.

~~(2)(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 it is a HIPAA-covered entity. The notice must include a statement of the reason for the claimed exemption.~~

(4) A licensee may claim an exemption only as to those lines of business that are subject to HIPAA privacy regulations. All other lines of business are subject to this chapter.

(5) A third-party administrator 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 activities of the third-party administrator that fall outside of the scope of that agreement are 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, 2005:

(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 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 3.** 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 ~~(4)(a)~~ (5)(a) when the policyholder or certificate holder was an applicant is still accurate;

(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.

(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) personal information is collected only from the policyholder or from public records; or~~

~~(B) 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, ~~except that notice is not required if personal information is collected only from the policyholder or from public records.~~

(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 that must include:

~~(i) the name, address, and institutional affiliation, if any, of each person receiving or examining the medical information during the preceding 3 years;~~

~~(ii) the date of the receipt or examination; and~~

~~(iii) to the extent practicable, a description of the information disclosed and 33-19-307.~~

~~(5)~~ In the case of individuals who are not policyholders or certificate holders:

(a) except as provided in subsection ~~(7)~~ (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 ~~(22)~~ (24) or 33-19-307. A notice given pursuant to this subsection ~~(4)(b)~~ (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 ~~(4)(b)~~ (5)(b) must explain a reasonable means by which an individual may obtain that notice.

~~(5)~~(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.

~~(6)~~(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.

~~(7)~~(8) An insurance institution may provide the notice required in subsection ~~(4)(a)~~ (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 ~~(4)(b)(i) through (4)(b)(iv)~~ (5)(b)(i) through (5)(b)(iv).

~~(8)~~(9) ~~If a licensee is required to provide notice concerning privacy in addition to the notice required by this section, the~~ 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, a notice containing provisions specific to Montana must conspicuously refer to any other notice form. 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 4.** Section 33-19-301, MCA, is amended to read:

**"33-19-301. Access to recorded personal information.** (1) If an individual, after proper identification, submits a written request to an insurance institution, insurance producer, or insurance-support organization for access to recorded personal information about the individual that is reasonably described by the individual and reasonably locatable and retrievable by the insurance institution, insurance producer, or insurance-support organization, the insurance institution, insurance producer, or insurance-support organization shall, within 30 business days from the date ~~such~~ that the request is received:

(a) inform the individual of the nature and substance of the recorded personal information in writing, by telephone, or by other oral communication, whichever the insurance institution, insurance producer, or insurance-support organization prefers;

(b) permit the individual to see and copy, in person, the recorded personal information pertaining to ~~him~~ *the individual* or to obtain a copy of the recorded personal information by mail, whichever the individual prefers. If the recorded personal information is in coded form, an accurate translation in plain language must be provided in writing.

(c) *except for the tracking of disclosures of medical record information that must be recorded and disclosed under subsection (2)*, disclose to the individual the identity, if recorded, of those persons to whom the insurance institution, insurance producer, or insurance-support organization has disclosed the

personal information within 2 years prior to the request and, if the identity is not recorded, the names of those insurance institutions, insurance producers, insurance-support organizations, or other persons to whom ~~such~~ the information is normally disclosed; and

(d) provide the individual with a summary of the procedures ~~he~~ that the individual may use to request correction, amendment, or deletion of recorded personal information.

(2) (a) *If an individual, after proper identification, submits a written request to a licensee for a record of disclosures of medical record information, the licensee shall provide to the individual a record of all disclosures of medical record information made by the licensee pursuant to 33-19-306(8), (9), other than disclosures made to law enforcement authorities, (10)(b), (12)(a)(iii), (13), (14), only as to medical record information that has not been deidentified, (15), (21), only as to medical record information that has not been deidentified, or (22) or 33-19-307. The record of those disclosures must include:*

(i) *the name, address, and institutional affiliation, if any, of each person receiving or examining the medical information during the preceding 2 years;*

(ii) *the date of the receipt or examination; and*

(iii) *to the extent practicable, a description of the information disclosed.*

(b) *If an individual submits a written request to a licensee for a record of disclosures of medical record information and the licensee may have made medical record information disclosures pursuant to 33-19-306(4)(b), (5), (11), (12)(a)(i), (12)(a)(ii), (12)(b), (16), (18), or (19), the licensee must provide the individual with a description of the types of medical record information that the licensee may disclose under those exceptions, along with a general description of the usual recipients of that information. Individual tracking of each disclosure of medical record information is not required.*

~~(2)~~(3) Personal information provided pursuant to subsection (1) must identify the source of the information if ~~such~~ the source is an institutional source.

~~(3)~~(4) Medical record information supplied by a medical care institution or medical professional and requested under subsection (1), together with the identity of the medical professional or medical care institution that provided the information, ~~shall~~ must be supplied either directly to the individual or to a medical professional designated by the individual and licensed to provide medical care with respect to the condition to which the information relates, whichever the insurance institution, insurance producer, or insurance-support organization prefers. If it elects to disclose the information to a medical professional designated by the individual, the insurance institution, insurance producer, or insurance-support organization shall notify the individual, at the time of the disclosure, that it has provided the information to the medical professional. The medical professional may review and interpret the information and, at the request of the affected individual, shall consult with the affected individual.

~~(4)~~(5) Except for personal information provided under 33-19-303, an insurance institution, insurance producer, or insurance-support organization may charge a reasonable fee to cover the costs incurred in providing a copy of recorded personal information to individuals.

~~(5)~~(6) The obligations imposed by this section upon an insurance institution or insurance producer may be satisfied by another insurance institution or

insurance producer authorized to act on its behalf. With respect to the copying and disclosure of recorded personal information pursuant to a request under subsection (1), an insurance institution, insurance producer, or insurance-support organization may make arrangements with an insurance-support organization or a consumer reporting agency to copy and disclose recorded personal information on its behalf.

~~(6)~~(7) The rights granted to individuals in this section extend to all natural persons to the extent information about them is collected, ~~and~~ maintained, *and disclosed* by an insurance institution, insurance producer, or insurance-support organization in connection with an insurance transaction. The rights granted to all natural persons by this subsection do not extend to information about them that relates to and is collected in connection with or in reasonable anticipation of a claim or civil or criminal proceeding involving them, *except for the tracking of medical record information as provided for in subsection (2).*

~~(7)~~(8) For the purposes of this section, the term "insurance-support organization" does not include "consumer reporting agency."

**Section 5.** Section 33-19-306, MCA, is amended to read:

**"33-19-306. Disclosure limitations and conditions.** (1) Except as provided in this section, a licensee may not disclose personal or privileged information about an individual collected or received in connection with an insurance transaction.

(2) Disclosure may be made with the written authorization of the individual. The authorization must be in the form provided in 33-19-206.

(3) Disclosure limited to that which is reasonably necessary may be made to a person to enable the person to provide information to the disclosing licensee for the purpose of detecting or preventing criminal activity, fraud, material misrepresentation, or material nondisclosure in connection with an insurance transaction. A person to whom information is disclosed pursuant to this subsection shall agree in writing not to further disclose the information, but this requirement for an agreement does not prevent disclosure of information that is necessary to obtain further information for the purposes set forth in this subsection.

(4) (a) Disclosure may be made between licensees if the information disclosed is limited to that which is reasonably necessary:

(i) to detect or prevent criminal activity, fraud, material misrepresentation, or material nondisclosure in connection with insurance transactions; or

(ii) for either the disclosing or receiving licensee to perform its insurance function ~~in connection with an insurance transaction involving an individual.~~

(b) A licensee receiving information pursuant to this subsection (4) may not further disclose the information unless otherwise permitted by this section.

(5) Disclosure may be made to a medical care institution, a medical professional, or the individual to whom the information pertains if that information is reasonably necessary for the following purposes:

(a) verifying insurance coverage or benefits;

(b) informing an individual of a medical problem of which the individual may not be aware;

(c) conducting an operations or services audit; or

(d) determining the reasonableness or necessity of medical services.

(6) Disclosure:

(a) may be made to an insurance regulatory authority ~~that agrees not to further disclose the information without the individual's separate, written authorization;~~

(b) must be made as required by law; and

(c) must be or may be made to the commissioner as required or permitted by law.

(7) Disclosure may be made by a licensee or an insurance-support organization to a law enforcement or other government authority or to an insurance regulatory agency:

(a) to protect the interests of a licensee in preventing, investigating, or prosecuting the perpetration of fraud upon a licensee; or

(b) if the licensee or insurance-support organization reasonably believes that illegal activities have been conducted by the individual.

(8) Disclosure that is limited to that which is reasonably necessary may be made as otherwise permitted or required by law.

(9) Disclosure that is limited to that which is reasonably necessary may be made in response to a facially valid administrative or judicial order, including a search warrant or subpoena.

(10) (a) Except as provided in subsection (10)(b), disclosure that is limited to that which is reasonably necessary may be made for the purpose of conducting actuarial or research studies if:

(i) an individual is not identified in any actuarial or research report;

(ii) materials allowing the individual to be identified are returned or destroyed as soon as they are no longer needed; and

(iii) the actuarial or research organization agrees not to further disclose the information without the individual's separate, written authorization.

(b) Disclosure of information may be made for:

(i) health research that is subject to the approval of an institutional review board and the requirements of federal law and regulations governing biomedical research; or

(ii) epidemiological or drug therapy outcomes research that requires information that has been made anonymous to protect the identity of the patient through coding or encryption.

(11) Disclosure may be made to a party or a representative of a party to a proposed sale, transfer, merger, or consolidation of all or part of the business of the licensee or insurance-support organization if:

(a) prior to the consummation of the sale, transfer, merger, or consolidation only information is disclosed that is reasonably necessary to enable the recipient to make business decisions about the purchase, transfer, merger, or consolidation; and

(b) the recipient agrees not to further disclose the information without the individual's separate, written authorization.

(12) (a) Disclosure that is limited to that which is reasonably necessary may be made to a licensee's affiliate as follows:

(i) to allow use of the information in connection with an audit of the licensee;



- (ii) to enable a licensee to perform an insurance function; or
- (iii) as allowed by 33-19-307.

(b) A licensee disclosing pursuant to this section must have a written agreement with the affiliate that the affiliate will not use or further disclose information received except to carry out the purposes set forth in subsection (12) (a) and that if further disclosure is necessary to meet those purposes, the disclosure will be made only to the licensee or to a person who agrees in writing to be bound by the same prohibition on use and disclosure. A disclosure allowed by 33-19-307 is governed by that section.

(13) Disclosure that is limited to that which is reasonably necessary may be made to an insurance-support organization to perform insurance-support services for the licensee. The insurance-support organization may redisclose the information to the extent necessary to provide its services to its member or subscriber licensees and other insurance-support organizations or as otherwise permitted by law, but not for a marketing purpose.

(14) ~~Notwithstanding any other provision of this section, disclosure~~ *Disclosure* may be made to a group policyholder for the purpose of reporting claims experience or conducting an audit of the licensee's operations or services if the information disclosed is reasonably necessary for the group policyholder to conduct the review or audit and the group policyholder agrees not to further disclose the information without the individual's separate, written authorization. ~~Information~~ *Medical record information* disclosed pursuant to this subsection must be edited to prevent the identification of the applicant, policyholder, or certificate holder. *Employer audits that are required by the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq., as amended, are not subject to the provisions of this subsection.*

(15) Disclosure that is limited to that which is reasonably necessary may be made to a professional peer review organization for the purpose of reviewing the service or conduct of a medical care institution or medical professional if the professional peer review organization agrees not to further disclose the information without the individual's separate, written authorization.

(16) Disclosure that is limited to that which is reasonably necessary may be made to a governmental authority as required by federal or state law or for the purpose of determining the individual's eligibility for health benefits for which the governmental authority may be liable.

(17) Disclosure that is limited to that which is reasonably necessary may be made to a certificate holder or policyholder for the purpose of providing information regarding the status of an insurance transaction. Disclosure pursuant to this subsection may not be made to a group policyholder without a separate, written authorization from the individual.

(18) Disclosure may be made to a person contractually engaged to provide services to enable a licensee to perform an insurance function, or to perform an insurance function on behalf of a licensee, if the person agrees in writing that the person will not use or further disclose information obtained or developed pursuant to the engagement except to carry out the limited purpose of the engagement and that if further disclosure is necessary to perform the insurance function, that disclosure will be made only to the licensee or to a person who agrees in writing to be bound by the same prohibitions on use and disclosure.

(19) If a licensee has to disclose personal or *privileged* information in order to perform an insurance function and disclosure is not permitted under another

exception in this section, disclosure may be made to a person other than a licensee if the disclosure is limited to that which is reasonably necessary to enable the person to perform services or an insurance function for the disclosing licensee and if the person is notified by the licensee that the person is prohibited from:

- (a) using the information other than to carry out the limited purpose for which the information is disclosed; and
- (b) disclosing the information other than to the licensee and as allowed in subsection (3).

*(20) Disclosure may be made to a lienholder, mortgagee, assignee, lessor, or other person shown on the records of an insurance institution or insurance producer as having a legal interest in a policy of insurance if:*

- (a) medical record information is not disclosed; and*
- (b) the information disclosed is limited to that which is reasonably necessary to permit the person with a legal interest in the policy to protect that person's interests in that policy.*

*(21) Disclosure may be made to provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating a licensee, persons that are assessing the licensee's compliance with industry standards, and the licensee's attorneys, accountants, and auditors, if the disclosure is limited to that which is reasonably necessary to enable the person or entity to perform services or an insurance function for the disclosing licensee and if the person or entity is notified by the licensee that the person or entity is prohibited from using the information, other than to carry out the limited purpose for which the information is disclosed.*

~~(20)~~ (22) Notwithstanding any other provision of this chapter, disclosure for a marketing purpose may be made only as allowed by 33-19-307.

~~(21)~~ (23) Nothing in this section may be construed to prevent the disclosure of personal information that is otherwise discoverable pursuant to the Montana Rules of Civil Procedure.

~~(22)~~ (24) The commissioner may adopt rules creating additional exceptions to disclosure restrictions for the purpose of allowing a licensee or insurance-support organization to carry out a necessary insurance function. The commissioner shall adopt rules establishing the methods that must be used by licensees to prevent identification as described in subsection (14)."

**Section 6.** Section 33-19-307, MCA, is amended to read:

**"33-19-307. Personal information used for marketing purposes — restrictions.** (1) Except as permitted in this section, a licensee may not use or disclose personal information for a marketing purpose. For the purposes of this section, an insurance producer who describes to the producer's clients products or services available through the producer is not engaged in marketing.

(2) A licensee may use or disclose to another licensee personal information that is reasonably necessary to enable the licensee to market insurance products or services. A licensee may use or disclose to another licensee personal information, excluding medical record information, that is reasonably necessary to enable the licensee to market financial products and services. A licensee that receives personal information under this section from a disclosing licensee may not further disclose the information or use the information for any purpose other than marketing insurance and financial products and services.

(3) A licensee may disclose personal information that is reasonably necessary to enable an affiliate that is not a licensee to market insurance products and services. A licensee may disclose to an affiliate that is not a licensee personal information, excluding medical record information, that is reasonably necessary to enable the affiliate to market financial products and services. Disclosures under this subsection may be made only with a written agreement with the affiliate that the affiliate will not further disclose the information and will use it only for marketing insurance or financial products and services.

(4) A licensee may disclose personal information that is reasonably necessary to enable a person contractually engaged to provide services for or on behalf of the licensee to market insurance or financial products or services if the person agrees in writing that the person will not use or further disclose information obtained or developed pursuant to the engagement except to carry out the limited purpose of the engagement. A licensee shall adopt, and maintain, ~~and monitor~~ policies and procedures reasonably designed to ensure that third parties with whom the licensee contracts under this subsection comply with the requirements of this section.

(5) A licensee may use or disclose personal information for purposes other than those specified in subsections (2) ~~and (3)~~ through (4) only with an individual's ~~separate~~ written authorization as described in 33-19-306(2). In addition to meeting the requirements of 33-19-206, the authorization must:

- (a) clearly and conspicuously state that the disclosed information is intended to be used for marketing purposes;
- (b) specify each entity or type of entity to which the licensee intends to disclose the information;
- (c) specify what information the licensee intends to disclose; and
- (d) specify the type of marketing that the individual might receive pursuant to the disclosure."

**Section 7. Effective dates — applicability.** (1) [Section 2 and this section] are effective on passage and approval.

(2) [Sections 1 and 3 through 6] are effective January 1, 2004, and apply to policies issued or renewed on or after January 1, 2004.

Approved April 17, 2003

## CHAPTER NO. 386

[HB 222]

AN ACT ALLOWING A JUDGE WHO REVOKES A SENTENCE SUSPENSION TO IMPOSE ANY SENTENCE THAT COULD HAVE BEEN IMPOSED THAT IS NOT LONGER THAN THE ORIGINAL SENTENCE; IMPOSING A SUPERVISORY FEE ON PERSONS SUPERVISED BY THE DEPARTMENT OF CORRECTIONS UNDER INTENSIVE SUPERVISION OR CONDITIONAL RELEASE OR TRANSFERRING THEIR SUPERVISION TO ANOTHER STATE; PROVIDING A PROCEDURE FOR SUSPENDING ALL OR PART OF THE REMAINING IMPRISONMENT SENTENCE OF A PERSON WHO SUCCESSFULLY COMPLETES THE STATE BOOT CAMP; GIVING PROBATION AND PAROLE OFFICERS AUTHORITY TO DETAIN

A PERSON UNDER LIMITED CIRCUMSTANCES AND TO TURN THE PERSON OVER TO A LAW ENFORCEMENT AGENCY OR PEACE OFFICER; AMENDING SECTIONS 46-18-203, 46-23-1031, AND 53-30-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 46-18-203, MCA, is amended to read:

**“46-18-203. Revocation of suspended or deferred sentence.** (1) Upon the filing of a petition for revocation showing probable cause that the offender has violated any condition of a sentence or any condition of a deferred imposition of sentence, the judge may issue an order for a hearing on revocation. The order must require the offender to appear at a specified time and place for the hearing and be served by delivering a copy of the petition and order to the offender personally. The judge may also issue an arrest warrant directing any peace officer or a probation and parole officer to arrest the offender and bring the offender before the court.

(2) The petition for a revocation must be filed with the sentencing court during the period of suspension or deferral. Expiration of the period of suspension or deferral after the petition is filed does not deprive the court of its jurisdiction to rule on the petition.

(3) The provisions pertaining to bail, as set forth in Title 46, chapter 9, are applicable to persons arrested pursuant to this section.

(4) Without unnecessary delay, the offender must be brought before the judge, and the offender must be advised of:

- (a) the allegations of the petition;
- (b) the opportunity to appear and to present evidence in the offender's own behalf;
- (c) the opportunity to question adverse witnesses; and
- (d) the right to be represented by counsel at the revocation hearing pursuant to Title 46, chapter 8, part 1.

(5) A hearing is required before a suspended or deferred sentence can be revoked or the terms or conditions of the sentence can be modified, unless:

- (a) the offender admits the allegations and waives the right to a hearing; or
- (b) the relief to be granted is favorable to the offender and the prosecutor, after having been given notice of the proposed relief and a reasonable opportunity to object, has not objected. An extension of the term of probation is not favorable to the offender for the purposes of this subsection (5)(b).

(6) At the hearing, the prosecution shall prove, by a preponderance of the evidence, that there has been a violation of the terms and conditions of the suspended or deferred sentence. However, when a failure to pay restitution is the basis for the petition, the offender may excuse the violation by showing sufficient evidence that the failure to pay restitution was not attributable to a failure on the offender's part to make a good faith effort to obtain sufficient means to make the restitution payments as ordered.

(7) (a) If the judge finds that the offender has violated the terms and conditions of the suspended or deferred sentence, the judge may:

- (i) continue the suspended or deferred sentence without a change in conditions;

(ii) continue the suspended sentence with modified or additional terms and conditions;

(iii) revoke the suspension of sentence and require the offender to serve either the sentence imposed or any ~~lesser~~ sentence *that could have been imposed that does not include a longer imprisonment or commitment term than the original sentence*; or

(iv) if the sentence was deferred, impose any sentence that might have been originally imposed.

(b) If a suspended or deferred sentence is revoked, the judge shall consider any elapsed time and either expressly allow all or part of the time as a credit against the sentence or reject all or part of the time as a credit. The judge shall state the reasons for the judge's determination in the order. Credit, ~~however,~~ must be allowed for time served in a detention center or home arrest time already served.

(c) If a judge finds that an offender has not violated a term or condition of a suspended or deferred sentence, that judge is not prevented from setting, modifying, or adding conditions of probation as provided in 46-23-1011.

(8) If the judge finds that the prosecution has not proved, by a preponderance of the evidence, that there has been a violation of the terms and conditions of the suspended or deferred sentence, the petition must be dismissed and the offender, if in custody, must be immediately released."

**Section 2.** Section 46-23-1031, MCA, is amended to read:

**"46-23-1031. Supervisory fees — account established.** (1) (a) Except as provided in subsection (1)(b), a probationer, ~~or~~ parolee, *or person committed to the department who is supervised by the department under intensive supervision or conditional release shall pay to the clerk of the district court that has jurisdiction over the person during the person's supervision* a supervisory fee of no less than \$120 a year and no more than \$360 a year, prorated at no less than \$10 a month for the number of months under supervision. *A person allowed to transfer supervision to another state shall pay a fee of \$50 to cover the cost of processing the transfer. The fee interstate transfer fees required by this subsection must be collected by the clerk of the district court with jurisdiction during the probationer's or parolee's period of supervision under this part department.*

(b) The court, *department,* or ~~the~~ board may reduce or waive ~~the~~ a fee required by subsection (1)(a) or suspend the monthly payment of the supervisory fee if it determines that the payment would cause the ~~probationer or parolee~~ person a significant financial hardship.

(2) (a) There is an account in the state special revenue fund for the *supervisory fees collected under the provisions of this section.*

(b) ~~(i) Prior to July 1, 2003, district court clerks~~ *Prior to July 1, 2003, district court clerks shall deduct from the total supervisory fees collected pursuant to subsection (1) the administrative cost of collecting and accounting for the fees and shall deposit the remaining amount into the state special revenue account established in subsection (2)(a). After June 30, 2003, district court clerks shall deposit the total supervisory fees collected pursuant to subsection (1) into the state special revenue account established in subsection (2)(a) as specified by the supreme court administrator.*

~~(ii) After June 30, 2003, district court clerks shall deposit the fees into the state special revenue account established in subsection (2)(a) as specified by the supreme court administrator."~~

**Section 3.** Section 53-30-402, MCA, is amended to read:

**"53-30-402. Sentence reduction for offenders Completion of boot camp — suspension of sentence.** A sentencing court retains jurisdiction for purposes of this section. A sentencing court may order a reduction of sentence for a convicted offender who:

(1) is certified by the department as having successfully completed the boot camp incarceration program; and

~~(2) applies to the court within 1 year after beginning to serve a sentence at a correctional institution. At the time of sentencing, the sentencing court may order that if the convicted person successfully completes the boot camp incarceration program:~~

*(1) the court will consider a petition from the person, after which the court may suspend all or part of the remainder of the person's sentence of imprisonment; or*

*(2) a part or all of the remainder of the person's sentence of imprisonment, as determined by the court at the time of sentencing, is automatically suspended on conditions imposed by the court at the time of sentencing."*

**Section 4. Arrest by probation and parole officer.** A probation and parole officer who, while in the course of conducting the officer's duties, has a reasonable suspicion that a person is interfering or will interfere with the officer's duties or has probable cause to believe that the person is committing or has committed an offense may detain the person. The probation and parole officer shall immediately notify the nearest available law enforcement agency or peace officer, and the law enforcement agency or peace officer shall either take the person into custody or release the person.

**Section 5. Codification instruction.** [Section 4] is intended to be codified as an integral part of Title 46, chapter 6, part 5, and the provisions of Title 46 apply to [section 4].

**Section 6. Coordination instruction.** *If House Bill No. 29 and [this act] are both passed and approved, then [section 1 of House Bill No. 29], amending 53-30-402, is void.*

**Section 7. Effective date.** [This act] is effective on passage and approval.

Approved April 17, 2003

## CHAPTER NO. 387

[HB 269]

AN ACT REVISING THE DEPARTMENT OF JUSTICE'S AND THE DEPARTMENT OF ADMINISTRATION'S RESPONSIBILITIES REGARDING FIRE PROTECTION AND FIRE PREVENTION; REMOVING CERTAIN REQUIREMENTS FOR KEEPING FIRE INCIDENT RECORDS; REMOVING THE REQUIREMENT THAT FIRE PREVENTION AND INVESTIGATION RULES ADOPTED BY THE DEPARTMENT OF JUSTICE INCLUDE CERTAIN BUILDING EQUIPMENT AND SYSTEMS; REQUIRING GENERAL LIABILITY INSURANCE RATHER THAN A BOND

FOR PUBLIC DISPLAYS OF FIREWORKS; REDEFINING OCCUPANCY OF BUILDINGS OR STRUCTURES FOR A BROAD RANGE OF PURPOSES; CHANGING THE FREQUENCY FOR FIRE INSPECTIONS IN SCHOOLS FROM 12 MONTHS TO 18 MONTHS; REMOVING CERTAIN REQUIREMENTS FOR FIRE INCIDENT REPORTS; REVISING CERTAIN PROVISIONS RELATED TO FIRE PROTECTION AND HAZARDOUS MATERIALS STORAGE FOR STATE-OWNED BUILDINGS AND ELIMINATING REVIEW RESPONSIBILITIES FOR ARCHITECTURAL PLANS PRESENTED TO LOCAL GOVERNMENTS; AMENDING SECTIONS 2-17-112, 50-3-102, 50-3-103, 50-37-108, 50-61-101, 50-61-103, 50-61-114, AND 50-63-203, MCA; AND REPEALING SECTIONS 50-61-112 AND 50-61-113, MCA.

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

**Section 1.** Section 2-17-112, MCA, is amended to read:

**"2-17-112. Fire protection for state-owned buildings — department of administration — ~~state fire prevention and investigation program.~~**

(1) The department of administration shall obtain information necessary to prepare a budget for each biennium for fire protection services for state-owned buildings that present particular firefighting and hazardous materials storage problems ~~as determined by the state fire prevention and investigation program of the department of justice.~~ In preparing the budget, the state may consider providing protection directly or contracting for protection with a local fire service and making payments to local governments for fire services provided to state agencies, all of which are subject to appropriation by the legislature.

~~(2) The department of justice shall review provisions for protection of state-owned buildings in connection with inspections conducted under 50-3-102."~~

**Section 2.** Section 50-3-102, MCA, is amended to read:

**"50-3-102. Powers and duties of department regarding state fire prevention and investigation — rules.** (1) For the purpose of reducing the state's fire loss, the department shall:

(a) inspect each unit of the Montana university system and other state buildings, including state institutions, as often as ~~its budget and other inspection~~ duties allow, but no more frequently than once each year unless requested by the commissioner of higher education for buildings in the university system, by the department of corrections or the department of public health and human services for state institutions, or by the department of administration for all other state buildings. A copy of the inspection report for units of the university system must be given to the commissioner of higher education, a copy of the inspection report for state institutions must be given to the department of corrections and the department of public health and human services, and a copy of the inspection report for all other state buildings must be given to the department of administration. The department of justice shall advise the commissioner of higher education and the directors of the departments of corrections, public health and human services, and administration concerning fire prevention, fire protection, and public safety when it distributes the reports.

(b) inspect public, business, or industrial buildings, as provided in chapter 61, and require conformance to law and rules promulgated under the provisions of this chapter;

(c) assist local fire and law enforcement authorities in arson investigations and may initiate or supervise these investigations when, in its judgment, the initiation or supervision is necessary;

(d) provide fire prevention and fire protection information to public officials and the general public;

(e) serve as the state entity primarily responsible for promoting fire safety at the state level;

(f) encourage coordination of all services and agencies in fire prevention matters to reduce duplication and fill voids in services; *and*

(g) establish rules concerning responsibilities and procedures to be followed when there is a threat of explosive material in a building housing state offices; *and*

~~(h) keep a record of all fires occurring in the state, the origin of the fires, and all facts, statistics, and circumstances relating to the fires that have been determined by investigations under the provisions of chapter 63. Except for statements of witnesses given during an investigation, information that may be held in confidence under 50-63-403, and criminal justice information subject to restrictions on dissemination in accordance with Title 44, chapter 5, the record must be open at all times to public inspection.~~

(2) The department may adopt rules necessary for safeguarding life and property from the hazards of fire and carrying into effect the fire prevention laws of this state.

(3) The department shall adopt rules based on nationally recognized standards necessary for safeguarding life and property from the hazards associated with the manufacture, transportation, storage, sale, and use of explosive materials.

(4) If necessary to safeguard life and property under rules promulgated pursuant to this section, the department may maintain an action to enjoin the use of all or a portion of a building or restrain a specific activity until there is compliance with the rules.

*(5) Except for statements of witnesses given during an investigation, information that may be held in confidence under 50-63-403, and criminal justice information subject to restrictions on dissemination in accordance with Title 44, chapter 5, all records maintained by the department must be open at all times to public inspection.*

**Section 3.** Section 50-3-103, MCA, is amended to read:

**“50-3-103. Rules promulgated by department.** (1) Rules promulgated by the department by authority of 50-3-102 must be reasonable and calculated to effect the purposes of this chapter. The rules must include but are not limited to requirements for:

(a) design, construction, installation, operation, storage, handling, maintenance, or use of structural requirements for various types of construction;

(b) building restrictions within congested districts;

(c) exit facilities from structures;

(d) fire extinguishers, fire alarm systems, and fire extinguishing systems;

(e) fire emergency drills;



- ~~(f) flue and chimney construction;~~
- ~~(g) heating devices;~~
- ~~(h) electrical wiring and equipment;~~
- ~~(i) air conditioning, ventilating, and other duct systems;~~
- ~~(j) refrigeration systems;~~
- ~~(k)(f) flammable liquids;~~
- ~~(l) oil and gas wells;~~
- ~~(m)(g) application of flammable finishes;~~
- ~~(n)(h) explosives, acetylene, liquefied petroleum gas, and similar products;~~
- ~~(o)(i) calcium carbide and acetylene generators;~~
- ~~(p)(j) flammable motion picture film;~~
- ~~(q)(k) combustibile fibers;~~
- ~~(r)(l) hazardous chemicals or materials;~~
- ~~(s)(m) rubbish;~~
- ~~(t)(n) open-flame devices;~~
- ~~(u)(o) parking of vehicles;~~
- ~~(v)(p) dust explosions;~~
- ~~(w)(q) lightning protection;~~
- ~~(x)(r) storage of smokeless powder and small arms primers; and~~
- ~~(y)(s) other special fire hazards.~~

(2) If rules relate to building and equipment standards covered by the state or a municipal building code, the rules are effective upon approval of the department of labor and industry and filing with the secretary of state.

(3) Federal or other nationally recognized standards for fire protection may be adopted in whole or in part by reference.

(4) Rules must be adopted as prescribed in the Montana Administrative Procedure Act.

(5) Rules promulgated by the department may not prevent the installation of an aboveground storage tank in a community, city, or town with a population of 1,500 or less if the tank is installed in conformance with all other applicable laws and regulations.

(6) Rules promulgated by the department may not require diked areas or heat-actuated or other shutoff devices for storage tanks containing class I or class II liquids, as defined in the uniform fire code, intended only for private use on farms and ranches.

(7) A person violating any rule made under the provisions of this part is guilty of a misdemeanor."

**Section 4.** Section 50-37-108, MCA, is amended to read:

**"50-37-108. ~~Damage indemnity bond~~ General liability insurance required for public display.** The state fire prevention and investigation program or the governing body of the city, town, or county shall require ~~a bond considered adequate by the state fire prevention and investigation program or governing body from the licensee in a sum not less than \$500, conditioned for the~~

~~payment of all damages which may be caused either to a person or persons or to property by reason of the licensed display and arising from any acts of the licensee, his agents, employees, or subcontractors a person planning a public display of fireworks to provide proof of general liability insurance in a reasonable amount as determined by rules adopted by the department of justice."~~

**Section 5.** Section 50-61-101, MCA, is amended to read:

**"50-61-101. Purpose of chapter.** The purpose and intent of this chapter are to provide for the public safety in case of fire in those occupancies specified in 50-61-103 and to ~~provide~~ *allow* for inspection of the buildings and premises by specified officers."

**Section 6.** Section 50-61-103, MCA, is amended to read:

**"50-61-103. Application of chapter — definitions.** This chapter applies to the occupancies defined below:

(1) "Assembly occupancy" means the occupancy or use of a building or a structure or any portion ~~thereof of a building or a structure~~ by a gathering of 50 or more persons for *purposes such as civic, political, travel, religious, or social functions; recreation, education, or instruction; food or drink consumption; or awaiting transportation,* ~~or recreational purposes, including among others:~~

- ~~(a) armories;~~
- ~~(b) assembly halls;~~
- ~~(c) auditoriums;~~
- ~~(d) bowling alleys;~~
- ~~(e) broadcasting studios;~~
- ~~(f) chapels;~~
- ~~(g) churches;~~
- ~~(h) club rooms;~~
- ~~(i) dance halls;~~
- ~~(j) exhibition rooms;~~
- ~~(k) gymnasiums;~~
- ~~(l) lecture halls;~~
- ~~(m) lodge rooms;~~
- ~~(n) motion picture theaters;~~
- ~~(o) museums;~~
- ~~(p) night clubs;~~
- ~~(q) opera houses;~~
- ~~(r) passenger stations;~~
- ~~(s) pool rooms;~~
- ~~(t) recreation areas;~~
- ~~(u) restaurants;~~
- ~~(v) skating rinks;~~
- ~~(w) television studios;~~
- ~~(x) theaters; and~~

~~(y) taverns.~~

(2) "Business occupancy" means the occupancy or use of a building or a structure or any portion ~~thereof of a building or a structure~~ for office, professional, or service transactions. A business occupancy includes the use of a structure for the storage of records and accounts or for an eating or drinking business establishment with an occupant load of less than 50 persons ~~the transaction of business or the rendering or receiving of professional services, including among others:~~

- ~~(a) banks;~~
- ~~(b) barbershops;~~
- ~~(c) beauty parlors;~~
- ~~(d) office buildings;~~
- ~~(e) radio stations;~~
- ~~(f) telephone exchanges; and~~
- ~~(g) television stations.~~

(3) "Educational occupancy" means the occupancy or use of a building or a structure or any portion ~~thereof of a building or a structure~~ by persons assembled for the purpose of learning or receiving educational instruction. An educational occupancy includes but is not limited to any building used for, ~~including among others:~~

- ~~(a) academies; educational purposes through the 12th grade for more than 12 hours a week or 4 hours in any 1 day; or~~
- ~~(b) colleges; day-care purposes for more than 12 persons~~
- ~~(c) libraries;~~
- ~~(d) schools; and~~
- ~~(e) universities.~~

(4) "Industrial occupancy" means the occupancy or use of a building or a structure or any portion ~~thereof of a building or a structure~~ for assembling, disassembling, fabricating, finishing, manufacturing, packaging, repairing, or processing operations, ~~including among others:~~

- ~~(a) assembly plants;~~
- ~~(b) creameries;~~
- ~~(c) electric substations;~~
- ~~(d) factories;~~
- ~~(e) ice plants;~~
- ~~(f) laboratories;~~
- ~~(g) laundries;~~
- ~~(h) manufacturing plants;~~
- ~~(i) mills;~~
- ~~(j) power plants;~~
- ~~(k) processing plants;~~
- ~~(l) pumping stations;~~
- ~~(m) repair garages;~~

~~(n) smokehouses; and~~

~~(o) workshops.~~

(5) "Institutional occupancy" means the occupancy or use of a building or a structure or any portion thereof of a building or a structure by more than five persons harbored or detained to receive medical, charitable, or other care or treatment or by persons involuntarily detained. An institutional occupancy includes but is not limited to, including among others:

~~(a) asylums; nurseries for the full-time care of children under the age of 6;~~

~~(b) homes for the aged;~~

~~(c) hospitals, sanitariums, or nursing homes; and~~

~~(d) houses of correction;~~ (c) mental hospitals, mental sanitariums, jails, prisons, reformatories, or buildings where personal liberties of those harbored or detained are similarly restrained.

~~(e) day care facilities;~~

~~(f) infirmaries;~~

~~(g) jails;~~

~~(h) nurseries;~~

~~(i) orphanages;~~

~~(j) nursing homes;~~

~~(k) penal institutions;~~

~~(l) reformatories;~~

~~(m) sanitariums;~~

~~(n) long term care facilities; and~~

~~(o) boarding homes.~~

(6) "Residential occupancy" means the occupancy or use of a building or a structure or any portion thereof of a building or a structure by persons for whom sleeping accommodations are provided and who are not harbored or detained to receive medical, charitable, or other care or treatment or and who are not involuntarily detained. A residential occupancy includes but is not limited to hotels, motels, apartment houses, dwellings, and lodging houses. A residential occupancy does not include a building used only for private residential purposes for a family, including among others (but not including single family private houses):

~~(a) apartments;~~

~~(b) clubhouses;~~

~~(c) convents;~~

~~(d) dormitories;~~

~~(e) dwellings;~~

~~(f) hotels;~~

~~(g) motels;~~

~~(h) multifamily houses; and~~

~~(i) lodging houses."~~

**Section 7.** Section 50-61-114, MCA, is amended to read:

**“50-61-114. Fire chief and fire inspector to make inspections.** ~~The~~ *For the purpose of examining the premises for violations of this chapter and rules adopted under 50-3-103 for the enforcement of this chapter, the chief of the fire department of each municipality, district, or fire service area, when a fire inspection program is established, or a fire inspector of the department of justice, when a fire inspection program does not exist,* ~~for the purpose of examining the premises for violations of this chapter and rules adopted under 50-3-103 for the enforcement of this chapter:~~

- (1) shall enter into school buildings at least once each ~~12~~ 18 months; and
- (2) may enter into all other buildings and upon all other premises within the jurisdiction, according to priority schedules established by the department for conducting inspections of buildings and premises.”

**Section 8.** Section 50-63-203, MCA, is amended to read:

**“50-63-203. Reports to be filed with Notification to department of justice.** (1) If it appears that ~~the~~ a fire was of suspicious origin, if there was a loss of human life, or if it is determined that a criminal investigation is necessary, the official responsible for the investigation shall notify the department of justice and the appropriate law enforcement agency within 24 hours and shall file a written report of the cause ~~with the department~~ within 10 days.

(2) If the property was insured, as soon as any adjustment has been made, a person representing the insurance company shall notify the department *of justice* of the amount of adjustment and the apparent cause and circumstances of the fire ~~on forms furnished by the department.~~

~~(3) Each official responsible for investigating fires shall file a fire incident report on each fire with the department. Reports shall be on forms and shall contain information prescribed by the department. These reports shall be sent to the department on a monthly basis or at intervals determined necessary by the department.”~~

**Section 9. Repealer.** Sections 50-61-112 and 50-61-113, MCA, are repealed.

**Section 10. Coordination instruction.** If House Bill No. 196 and [this act] are both passed and approved, then [section 22] of House Bill No. 196, amending 50-61-103, is void.

Approved April 17, 2003

## CHAPTER NO. 388

[HB 289]

AN ACT INCREASING THE SANCTIONS IMPOSED UPON A DRIVER WHO REFUSES TO SUBMIT TO A BLOOD OR BREATH TEST BY PROVIDING A REBUTTABLE INFERENCE THAT A PERSON WHO REFUSES A TEST IS UNDER THE INFLUENCE; AND AMENDING SECTION 61-8-404, MCA.

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

**Section 1.** Section 61-8-404, MCA, is amended to read:

**“61-8-404. Evidence admissible — conditions of admissibility.** (1) Upon the trial of a criminal action or other proceeding arising out of acts alleged

to have been committed by a person in violation of 61-8-401, 61-8-406, 61-8-410, or 61-8-805:

(a) evidence of any measured amount or detected presence of alcohol, drugs, or a combination of alcohol and drugs in the person at the time of a test, as shown by an analysis of the person's blood or breath, is admissible. A positive test result does not, in itself, prove that the person was under the influence of a drug or drugs at the time the person was in control of a motor vehicle. A person may not be convicted of a violation of 61-8-401 based upon the presence of a drug or drugs in the person unless some other competent evidence exists that tends to establish that the person was under the influence of a drug or drugs while driving or in actual physical control of a motor vehicle within this state.

(b) a report of the facts and results of one or more tests of a person's blood or breath is admissible in evidence if:

(i) a breath test or preliminary alcohol screening test was performed by a person certified by the forensic sciences division of the department to administer the test;

(ii) a blood sample was analyzed in a laboratory operated or certified by the department or in a laboratory exempt from certification under the rules of the department and the blood was withdrawn from the person by a person competent to do so under 61-8-405(1);

(c) a report of the facts and results of a physical, psychomotor, or physiological assessment of a person is admissible in evidence if it was made by a person trained by the department or by a person who has received training recognized by the department.

(2) If the person under arrest refused to submit to one or more tests as provided in this section, proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a vehicle upon the ways of this state open to the public, while under the influence of alcohol, drugs, or a combination of alcohol and drugs. *The trier of fact may infer from the refusal that the person was under the influence. The inference is rebuttable.*

(3) The provisions of this part do not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of alcohol and drugs."

Approved April 18, 2003

## CHAPTER NO. 389

[HB 358]

AN ACT GENERALLY REVISING THE LAWS GOVERNING MUNICIPAL COURTS AND JUSTICES' COURTS; REVISING THE QUALIFICATIONS AND TRAINING REQUIREMENTS FOR MUNICIPAL COURT JUDGES; ALLOWING A COUNTY TO ESTABLISH A JUSTICE'S COURT AS A COURT OF RECORD; PROVIDING THAT THE QUALIFICATIONS AND TRAINING REQUIREMENTS FOR A JUSTICE OF THE PEACE SERVING IN A JUSTICE'S COURT ESTABLISHED AS A COURT OF RECORD ARE THE SAME AS FOR A MUNICIPAL COURT JUDGE; PROVIDING THAT APPEALS FROM A JUSTICE'S COURT ESTABLISHED AS A COURT OF RECORD ARE ON THE RECORD AND NOT DE NOVO; AUTHORIZING A

MUNICIPAL COURT JUDGE OR A JUSTICE OF THE PEACE FOR A JUSTICE'S COURT ESTABLISHED AS A COURT OF RECORD TO ACT AS A JUDGE PRO TEMPORE IN A DISTRICT COURT; PROVIDING A GRANDFATHER CLAUSE FOR EXISTING JUSTICES OF THE PEACE; AMENDING SECTIONS 3-5-114, 3-6-102, 3-6-202, 3-6-204, 3-10-101, 3-10-203, 3-10-207, 25-33-301, AND 46-17-311, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 3-5-114, MCA, is amended to read:

**"3-5-114. Qualifications.** Any of the following individuals may act as a judge pro tempore:

- (1) a member of the bar of the state who meets the qualifications for judge of the district court as provided in 3-5-202;
- (2) a retired judge of the district court;
- (3) a justice of the peace for a justice's court established as a court of record, provided for in 3-10-101;
- (4) a municipal court judge; or
- ~~(5)~~ a retired justice of the supreme court."

**Section 2.** Section 3-6-102, MCA, is amended to read:

**"3-6-102. Abolition of city court.** (1) In cities in which a municipal court is established, the office of city judge is abolished.

(2) Except as provided in 3-6-101(2), a city judge whose office is abolished shall serve as a municipal court judge in the same city in which ~~he~~ *the judge* served as city judge for the remainder of ~~his~~ *the judge's* term and until the office of municipal court judge is filled by election, as provided under 3-6-201 ~~and 3-6-202.~~"

**Section 3.** Section 3-6-202, MCA, is amended to read:

**"3-6-202. Qualifications — certification — training.** (1) A municipal court judge must have the same qualifications as a judge of a district court, as set forth in Article VII, section 9, of the ~~1972~~ Montana constitution, except that a municipal court judge need only be admitted to the practice of law in Montana for at least ~~2~~ 3 years prior to the date of appointment or election.

(2) A municipal court judge ~~must be a resident and voter in the city in which he is elected at the time of his election~~ shall reside in the county in which the court is located and shall meet the residency requirements provided in 3-10-204.

~~(3) A municipal court judge must be certified as provided in 3-1-1502 or 3-1-1503 prior to assuming office.~~

~~(4) There must be two mandatory annual training sessions supervised by the supreme court for all elected and appointed municipal court judges. One of the training sessions may be held in conjunction with the Montana magistrates' association convention. Actual and necessary travel expenses, as defined and provided for in 2-18-501 through 2-18-503, and the costs of registration and books and other materials must be paid to the elected or appointed municipal court judge for attending the sessions by the city in which he holds or will hold court and must be charged against that city.~~

~~(5) Each municipal court judge shall attend the training sessions provided for in subsection (4). Failure to attend disqualifies a judge from office and~~

~~creates a vacancy in the office. However, the supreme court may excuse a municipal court judge from attendance because of illness, a death in the family, or any other good cause.~~

(3) *The commission on courts of limited jurisdiction, upon finding compliance with subsections (1) and (2), shall issue a certificate, as required in 3-1-1502, prior to the municipal court judge assuming office. The certificate must be conditioned upon continued compliance with the minimum judicial education requirements provided for in this section. The certificate must be filed with the clerk and recorder as provided in 3-1-1502.*

(4) *A municipal court judge shall complete a minimum of 15 hours of continuing judicial education requirements each year or a greater number established by the supreme court. Attendance at the two annual training sessions under 3-10-203 may fulfill the requirement provided for in this subsection.*

(5) *Completion of a course approved for continuing judicial or legal education hours applies to the judicial education requirements under subsection (4).*

(6) *A municipal court judge is entitled to reimbursement by the city in which the judge holds or will hold court for all actual and necessary expenses and costs incurred in attending a continuing judicial or legal education course.*

(7) *On or before December 31 of each year, a municipal court judge shall file an affidavit of compliance with the continuing judicial education requirements established in this section with the commission on courts of limited jurisdiction. The supreme court may sanction a municipal court judge or declare a vacancy in the office of the judge for failure to meet the training requirements established in this section."*

**Section 4.** Section 3-6-204, MCA, is amended to read:

**"3-6-204. Disqualification — judge pro tempore.** When a judge of a municipal court has been disqualified or is sick or unable to act, ~~he the judge~~ shall call in a justice of the peace for a justice's court established as a court of record provided for in 3-10-101, another municipal court judge, a retired justice of the peace for a justice's court established as a court of record, a retired municipal court judge, or ~~some practicing an attorney of the county in which his~~ the court is located, ~~who shall be to act as a judge pro tempore. The judge pro tempore with has the same powers for the purposes of the cause power and authority as the municipal court judge of the court."~~

**Section 5.** Section 3-10-101, MCA, is amended to read:

**"3-10-101. Number and location of justices' courts — authorization to combine with city court — justice's court established as court of record.** (1) There must be at least one justice's court in each county of the state, which must be located at the county seat. The board of county commissioners shall designate the number of justices in each justice's court.

(2) The board of county commissioners of each county of the state may establish:

(a) one additional justice's court located anywhere in the county; and

(b) one additional justice's court located in each city having a population of over 5,000, as provided in subsection (3).

(3) A city having a population of over 5,000 may, by resolution, request the board of county commissioners to constitute a justice's court in the city. A



justice's court must be established in the city if the board of county commissioners approves the request by resolution.

(4) A justice of the peace of a court established pursuant to subsection (3) may act as the city judge upon passage of a city ordinance authorizing the action and upon approval of the ordinance by resolution of the board of county commissioners. If the ordinance and resolution are passed, the city and the county shall enter into an agreement for proportionate payment of the justice's salary, as established under 3-10-207 and 3-11-202, and for proportionate reimbursement for the use of facilities.

(5) *A county may establish the justice's court as a court of record. If the justice's court is established as a court of record, it must be known as a justice's court established as a court of record and, in addition to the provisions of this chapter, is also subject to the provisions of [sections 8 through 10]. The court's proceedings must be recorded by electronic recording or stenographic transcription and all papers filed in a proceeding must be included in the record. A justice's court established as a court of record may be established by a resolution of the county commissioners or pursuant to 7-5-131 through 7-5-137.*

**Section 6.** Section 3-10-203, MCA, is amended to read:

**"3-10-203. Orientation course — annual training.** (1) Under the supervision of the supreme court, a course of study must be presented as soon as is practical following each general election. Actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, and the costs of registration and books and other materials ~~shall~~ *must* be paid to the elected or appointed justice of the peace for attending the course by the county in which ~~he~~ *the justice of the peace* holds or will hold court and ~~shall~~ *must* be charged against that county.

(2) ~~There shall~~ *Subject to subsection (4), there must* be two mandatory annual training sessions supervised by the supreme court for all elected and appointed justices of the peace. One of the training sessions may be held in conjunction with the Montana magistrates' association convention. Actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, and the costs of registration and books and other materials ~~shall~~ *must* be paid to the elected or appointed justice of the peace for attending the sessions by the county in which ~~he~~ *the justice of the peace* holds or will hold court and ~~shall~~ *must* be charged against that county.

(3) ~~Each~~ *Except as provided in subsection (4), each* justice of the peace shall attend the training sessions provided for in subsection (2). Failure to attend disqualifies ~~him~~ *the justice of the peace* from office and creates a vacancy in the office. However, the supreme court may excuse a justice of the peace from attendance because of illness, a death in the family, or any other good cause.

(4) *A justice of the peace for a justice's court established as a court of record, provided for in 3-10-101, must meet the requirements provided for in [section 10].*

**Section 7.** Section 3-10-207, MCA, is amended to read:

**"3-10-207. Salaries.** (1) ~~The~~ *Subject to subsections (2) through (4), the* board of county commissioners shall set salaries for justices of the peace by resolution and in conjunction with setting salaries for other officers as provided in 7-4-2504(1).

(2) The salary of the justice of the peace may not be less than the salary for the district clerk of the court in that county.

(3) If the justice's court is not open for business full time, the justice's salary must be commensurate to the workload and office hours of the court. The salary of a justice of the peace may not be reduced during the justice's term of office.

(4) *The salary of the justice of the peace for a justice's court established as a court of record may not exceed 90% of the salary of a district court judge determined as provided in 3-5-211."*

**Section 8. Appeal to district court from justice's court established as court of record — record on appeal.** (1) A party may appeal to district court from a justice's court established as a court of record judgment or order. The appeal is confined to review of the record and questions of law, subject to the supreme court's rulemaking and supervisory authority.

(2) The record on appeal to district court consists of an electronic recording or stenographic transcription of a case tried, together with all papers filed in the action.

(3) The district court may affirm, reverse, or amend any appealed order or judgment and may direct the proper order or judgment to be entered or direct that a new trial or further proceeding be had in the court from which the appeal was taken.

(4) Unless the supreme court establishes rules for appeal from a justice's court established as a court of record to the district court, the Montana Uniform Municipal Court Rules of Appeal to District Court, codified in Title 25, chapter 30, apply to appeals from the justice's court established as a court of record to district court.

**Section 9. Disqualification of justice of peace for justice's court established as court of record — judge pro tempore.** When a justice of the peace for a justice's court established as a court of record has been disqualified or is sick or unable to act, the justice shall call in another justice of the peace for a justice's court established as a court of record, a municipal court judge, a retired justice of the peace for a justice's court established as a court of record, a retired municipal court judge, or an attorney of the county in which the court is located to act as a judge pro tempore. The judge pro tempore has the same power and authority as the justice of the peace for the justice's court established as a court of record.

**Section 10. Minimum judicial education requirements — justice of peace for justice's court established as court of record.** (1) The commission on courts of limited jurisdiction shall issue a certificate, as required in 3-1-1502, prior to the justice of the peace for a justice's court established as a court of record assuming office. The certificate must be conditioned upon continued compliance with the minimum judicial education requirements provided for in this section. The certificate must be filed with the clerk and recorder as provided in 3-1-1502.

(2) A justice of the peace for a justice's court established as a court of record, provided for in 3-10-101, shall complete a minimum of 15 hours of continuing judicial education requirements each year or a greater number established by the supreme court. Attendance at the two annual training sessions under 3-10-203 may fulfill the requirement provided for in this subsection.

(3) Completion of a course approved for continuing judicial or legal education hours applies to the judicial education requirements under subsection (2).

(4) A justice of the peace for a justice's court established as a court of record is entitled to reimbursement by the county in which the justice of the peace holds or will hold court for all actual and necessary expenses and costs incurred in attending a continuing judicial or legal education course.

(5) On or before December 31 of each year, a justice of the peace for a justice's court established as a court of record shall file an affidavit of compliance with the continuing judicial education requirements established in this section with the commission on courts of limited jurisdiction. The supreme court may sanction a justice of the peace for a justice's court established as a court of record or declare a vacancy in the office of the justice of the peace for failure to meet the training requirements established in this section.

**Section 11.** Section 25-33-301, MCA, is amended to read:

**"25-33-301. Trial de novo — pleadings, — conduct of trial.** (1) ~~All~~ Except as provided in subsection (3), all appeals from justices' or city courts must be tried anew in the district court on the papers filed in the justice's or city court unless the court, for good cause shown and on such terms as may be that are just, ~~allow~~ allows other or amended pleadings to be filed in such the action. The court may order new or amended pleadings to be filed. Each party has the benefit of all legal objections made in the justice's or city court.

(2) When the action is tried anew on appeal, the trial must be conducted in all respects as other trials in the district court. The provisions of this code as to trials in the district courts are applicable to trials on appeal in the district court.

(3) *The appeal from a justice's court established as a court of record pursuant to 3-10-101 is on the record as provided in [section 8].*

**Section 12.** Section 46-17-311, MCA, is amended to read:

**"46-17-311. Appeal from justices', municipal, and city courts.** (1) Except as provided in subsection (4) and except for cases in which legal issues are preserved for appeal pursuant to 46-12-204, all cases on appeal from a justice's or city court must be tried anew in the district court and may be tried before a jury of six selected in the same manner as for other criminal cases. An appeal from a municipal court to the district court is governed by 3-6-110, and an appeal from a justice's court established as a court of record is governed by [section 8].

(2) The defendant may appeal to the district court by filing written notice of intention to appeal within 10 days after a judgment is rendered following trial. In the case of an appeal by the prosecution, the notice must be filed within 10 days of the date that the order complained of is given. The prosecution may appeal only in the cases provided for in 46-20-103.

(3) Within 30 days of filing the notice of appeal, the court shall transfer the entire record of the court of limited jurisdiction to the district court.

(4) A defendant may appeal a justice's court, *other than a justice's court established as a court of record*, or city court revocation of a suspended sentence to the district court. The district court judge shall determine whether the suspended sentence will be revoked. A jury trial is not available in a sentence revocation procedure."

**Section 13. Grandfather clause.** An incumbent justice of the peace on [the effective date of this act], in a county in which a justice's court established as a court of record is established, who meets the minimum education requirements for a justice of the peace is eligible to run for the justice of the

peace for a justice's court established as a court of record in that county at the next and subsequent elections held for the justice of the peace for the justice's court established as a court of record unless the justice of the peace has a break in service.

**Section 14. 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 15. Codification instruction.** [Sections 8 through 10] are intended to be codified as an integral part of Title 3, chapter 10, and the provisions of Title 3, chapter 10, apply to [sections 8 through 10].

**Section 16. Effective date.** [This act] is effective July 1, 2003.

Approved April 18, 2003

## CHAPTER NO. 390

[HB 481]

AN ACT IMPOSING A UTILIZATION FEE ON HOSPITAL FACILITIES FOR INPATIENT BED DAYS; AUTHORIZING THE DEPARTMENT OF REVENUE TO COLLECT AND DEPOSIT FEES IN A STATE SPECIAL REVENUE ACCOUNT FOR FUNDING INCREASES IN MEDICAID PAYMENTS TO HOSPITALS; PROVIDING FOR ASSESSMENT, COLLECTION, AND ADJUSTMENT OF THE FEE; PROVIDING AN APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE, AN APPLICABILITY DATE, A TERMINATION DATE, AND A CONTINGENT VOIDNESS PROVISION.

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

**Section 1. Definitions.** For purposes of [sections 1 through 13], the following definitions apply:

(1) (a) "Hospital" means a facility licensed as a hospital pursuant to Title 50, chapter 5.

(b) The term does not include Montana state hospital.

(2) (a) "Inpatient bed day" means a day of inpatient care provided to a patient in a hospital. A day begins at midnight and ends 24 hours later. A part of a day, including the day of admission, counts as a full day. The day of discharge or death is not counted as a day. If admission and discharge or death occur on the same day, the day is considered a day of admission and counted as one inpatient bed day. Inpatient bed days include all inpatient hospital benefit days as defined for medicare reporting purposes in section 216 of the centers for medicaid and medicare services publication 10, the Hospital Manual. Inpatient bed days also include all nursery days during which a newborn infant receives care in a nursery.

(b) The term does not include observation days or days of care in a swing bed, as defined in 50-5-101.

(3) "Patient" means an individual obtaining skilled medical and nursing services in a hospital. The term includes newborn infants.

(4) "Report" means the report of inpatient bed days required in [section 3].

(5) "Utilization fee" or "fee" means the fee required to be paid for each inpatient bed day, as provided in [section 2].

**Section 2. Utilization fee for inpatient bed days.** (1) Each hospital in the state shall pay to the department a utilization fee in the amount of:

(a) \$32.44 for each inpatient bed day between July 1, 2003, and December 31, 2003; and

(b) \$19.43 for each inpatient bed day between January 1, 2004, and June 30, 2005.

(2) (a) All proceeds from the collection of utilization fees, including penalties and interest, must be deposited to the credit of the department of public health and human services in a state special revenue fund as provided in [section 14].

(b) A hospital may not place a fee created in [sections 1 through 13] on a patient's bill.

**Section 3. Reporting and collection of fee.** (1) (a) On or before January 31, 2004, a hospital shall file with the department an annual report of the number of inpatient bed days in the hospital during the 6-month period beginning July 1, 2003, and ending December 31, 2003. The report must be in the form prescribed by the department. The report must be accompanied by a payment in an amount equal to the fee required to be paid under [section 2(1)(a)].

(b) On or before January 31, 2004, the department of public health and human services shall provide the department with a list of hospitals licensed and operating in the state during the 6-month period beginning July 1, 2003, and ending December 31, 2003.

(2) (a) Except as provided in subsection (1), on or before January 31 of each year, a hospital shall file with the department an annual report of the number of inpatient bed days during the preceding year beginning January 1 and ending December 31. The report must be in the form prescribed by the department. The report must be accompanied by a payment in an amount equal to the fee required to be paid under [section 2(1)(b)].

(b) Except as provided in subsection (1), on or before January 31 of each year, the department of public health and human services shall provide the department with a list of hospitals licensed and operating in the state during the preceding year beginning January 1 and ending December 31.

**Section 4. Audit — records.** (1) The department may audit the records and other documents of any hospital to ensure that the proper utilization fee has been collected.

(2) The department may require the hospital to provide records and other documentation, including books, ledgers, and registers, necessary for the department to verify the proper amount of the utilization fee paid.

(3) A hospital shall maintain and make available for inspection by the department sufficient records and other documentation to demonstrate the number of inpatient bed days in the facility subject to the utilization fee. The facility shall maintain these records for a period of at least 5 years from the date the report is due.

**Section 5. Periods of limitation.** (1) Except as otherwise provided in this section, a deficiency may not be assessed or collected with respect to the year for which a report is filed unless the notice of additional fees proposed to be assessed

is mailed within 5 years from the date the report was filed. For the purposes of this section, a report filed before the last day prescribed for filing is considered filed on the last day. If, before the expiration of the period prescribed for assessment of the fee, the hospital consents in writing to an assessment after the 5-year period, the fee may be assessed at any time prior to the expiration of the period agreed upon.

(2) A refund or credit may not be paid or allowed with respect to the year for which a report is filed after 5 years from the last day prescribed for filing the report or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period, the hospital files a claim or the department has determined the existence of the overpayment and has approved the refund or credit. If the hospital 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 is filed or a credit or refund is allowed if a claim is not filed is automatically extended.

**Section 6. Penalty and interest for delinquent fees — waiver.** If the fee for any hospital is not paid on or before the due date of the report as provided in [section 3], penalty and interest, as provided in 15-1-216, must be added to the fee.

**Section 7. Estimated fee on failure to file.** For the purpose of ascertaining the correctness of any report or for the purpose of making an estimate of inpatient bed day use of any hospital for which information has been obtained, the department may:

(1) examine or cause to have examined by any designated agent or representative any books, papers, records, or memoranda bearing upon the matters required to be included in the report;

(2) require the attendance of any officer or employee of the facility rendering the report or the attendance of any other person in the premises having relevant knowledge; and

(3) take testimony and require production of any other material for its information.

**Section 8. Deficiency assessment — hearing.** (1) If the department determines that the amount of fees due is greater than the amount disclosed by the report, it shall mail to the hospital a notice of the additional fees proposed to be assessed. Within 30 days after the mailing of the notice, the hospital may file with the department a written protest against the proposed additional fees, setting forth the grounds upon which the protest is based, and may request in its protest an oral hearing or an opportunity to present additional evidence relating to its fees liability. If a protest is not filed, the amount of the additional fees proposed to be assessed becomes final upon the expiration of the 30-day period. If a protest is filed, the department shall reconsider the proposed assessment and, if the hospital has requested, shall grant the hospital an oral hearing. After consideration of the protest and the evidence presented at an oral hearing, the department's action upon the protest is final when it mails notice of its action to the hospital.

(2) When a deficiency is determined and the fees become final, the department shall mail notice and demand for payment to the hospital, and the fees become due and payable at the expiration of 10 days from the date of the notice and demand. Any deficiency assessment bears interest from the date

specified in [section 3] for payment of the fees. A certificate by the department of the mailing of the notices specified in this section is prima facie evidence of the computation and levy of the deficiency in the fees and of the giving of the notice.

**Section 9. Closing agreements.** (1) The director of the department or any person authorized in writing by the director may enter into an agreement with a hospital relating to the liability of the hospital with respect to the fees imposed by [sections 1 through 13] for any period.

(2) An agreement under this section is final and conclusive and, except upon a showing of fraud or malfeasance or misrepresentation of a material fact:

(a) in a case involving the agreement, the agreement may not be reopened as to matters agreed upon or modified by any officer, employee, or agent of this state; and

(b) the agreement may not be annulled, modified, set aside, or disregarded in any suit, action, or proceeding concerning the agreement or concerning any determination, assessment, collection, payment, abatement, refund, or credit made in accordance with the agreement.

**Section 10. Credit for overpayment — interest on overpayment.** (1) If the department determines that the amount of fees, penalty, or interest due for any period is less than the amount paid, the amount of the overpayment must be credited against any fees, penalty, or interest due from the hospital at that time and the balance must be refunded to the hospital or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) Except as provided in subsection (3), interest is allowed on overpayments at the same rate as is charged on unpaid taxes, as provided in 15-1-216, from the due date of the report or from the date of overpayment, whichever date is later, to the date the department approves refunding or crediting of the overpayment. Interest does not accrue during any period during which the processing of a claim for refund is delayed more than 30 days by reason of failure of the hospital to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(3) Interest is not allowed:

(a) if the overpayment is refunded within 6 months from the date the report is due or from the date the return is filed, whichever is later; or

(b) if the amount of interest is less than \$1.

(4) A payment not made incident to a discharge of actual utilization fee liability or a payment reasonably assumed to be imposed by [sections 1 through 13] is not considered an overpayment with respect to which interest is allowable.

**Section 11. Warrant for distraint.** If the utilization fee is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7.

**Section 12. Relation to other taxes and fees.** The utilization fee imposed under [section 2] is in addition to any other taxes and fees required to be paid by hospitals.

**Section 13. Rulemaking.** The department may adopt rules necessary to implement and administer [sections 1 through 13].

**Section 14. State special revenue fund account — administration.**

(1) There is a hospital medicaid reimbursement account in the state special revenue fund provided for in 17-2-102.

(2) All money collected under [section 2] must be deposited in the account.

(3) Money in the account must be used by the department of public health and human services to provide funding for increases in medicaid payments to hospitals and for the costs of collection of the fee and other administrative activities associated with the implementation of increases in the medicaid payments to hospitals.

**Section 15. Appropriation.** (1) The following money is appropriated to the department of public health and human services from the account in the state special revenue fund created in [section 14] to fund increases in medicaid payments to hospitals:

Fiscal Year 2004	\$ 7,225,925
Fiscal Year 2005	\$ 8,732,387

(2) The following money is appropriated to the department of public health and human services from the federal special revenue fund to match state special revenue in subsection (1) to fund increases in medicaid payments to hospitals:

Fiscal Year 2004	\$19,418,341
Fiscal Year 2005	\$22,941,125

(3) The increases to medicaid payments must be distributed no later than February 28 of each fiscal year.

**Section 16. Codification instruction.** (1) [Sections 1 through 13] are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 1 through 13].

(2) [Section 14] is intended to be codified as an integral part of Title 53, chapter 6, and the provisions of Title 53, chapter 6, apply to [section 14].

**Section 17. 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 18. Contingent voidness — payment of fees.** (1) If federal law or policy is amended so that the utilization fees collected pursuant to [sections 1 through 13] may not be considered as the state's share in claiming federal financial participation under the medicaid program, [sections 1 through 13] are void as of the effective date of the change in federal law or policy.

(2) If the federal government refuses to participate in or denies approval of any plan for medicaid payments to hospitals on grounds that it considers the payments to be reimbursement to facilities for payment of the utilization fees, [sections 1 through 13] are void as of the date of receipt by the department of public health and human services of notice of an official determination of any refusal or denial.

(3) If the federal government determines that a part of [sections 1 through 13] violates federal law or regulations, that part is void as of the date of receipt by the department of public health and human services of notice of an official determination by the federal government. All valid parts of [sections 1 through 13] remain in effect. If the federal government determines that a part of [sections 1 through 13] violates federal law or regulations in one or more of its



applications, then the department of public health and human services may not administer [sections 1 through 13] in a manner that violates the pertinent federal law or regulations after the date of receipt by the department of public health and human services of notice of an official determination by the federal government. All valid applications remain in effect.

(4) If [sections 1 through 13] or any part of [sections 1 through 13] imposing a fee on a specific facility becomes void under the provisions of this section, all fees due, received, or collected by the department of revenue prior to the date upon which [sections 1 through 13] or any part of [sections 1 through 13] becomes void must be paid and deposited in accordance with [section 2] and a person or party may not receive a refund of any fees received or collected by the department of revenue prior to the date upon which [sections 1 through 13] or any part of [sections 1 through 13] becomes void. Any fees owing as of the date on which [sections 1 through 13] becomes void are considered waived.

(5) The department of public health and human services shall notify the code commissioner of the occurrence of any determination made pursuant to subsection (1) or (2) and the date of the occurrence.

**Section 19. Effective date.** [This act] is effective July 1, 2003.

**Section 20. Termination.** [This act] terminates June 30, 2005.

Approved April 17, 2003

## CHAPTER NO. 391

[HB 499]

AN ACT REVISING EMERGENCY HEALTH POWERS AND COMMUNICABLE DISEASE LAWS TO ENSURE THE ABILITY TO ADEQUATELY RESPOND TO INCIDENTS AND DISASTERS INVOLVING BIOTERRORISM AND WEAPONS OF MASS DESTRUCTION; DEFINING TERMS; AMENDING SECTIONS 10-3-103, 45-5-623, 50-1-101, 50-1-202, 50-1-204, 50-2-101, 50-2-116, 50-2-118, 50-2-130, AND 50-16-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 10-3-103, MCA, is amended to read:

**“10-3-103. Definitions.** As used in parts 1 through 4 of this chapter, the following definitions apply:

(1) “Civil defense” means the nuclear preparedness functions and responsibilities of disaster and emergency services.

(2) “Department” means the department of military affairs.

(3) “Disaster” means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or ~~man-made~~ *artificial* cause, including tornadoes, windstorms, snowstorms, wind-driven water, high water, floods, wave action, earthquakes, landslides, mudslides, volcanic action, fires, explosions, air or water contamination requiring emergency action to avert danger or damage, blight, droughts, infestations, riots, sabotage, hostile military or paramilitary action, disruption of state services, ~~or~~ accidents involving radiation byproducts or other hazardous materials, *bioterrorism, or incidents involving weapons of mass destruction.*

(4) "Disaster and emergency services" means the preparation for and the carrying out of disaster and emergency functions and responsibilities, other than those for which military forces or other state or federal agencies are primarily responsible, to mitigate, prepare for, respond to, and recover from injury and damage resulting from emergencies or disasters.

(5) "Division" means the division of disaster and emergency services of the department.

(6) "Emergency" means the imminent threat of a disaster causing immediate peril to life or property that timely action can avert or minimize.

(7) (a) "Incident" means an event or occurrence, caused by either an individual or by natural phenomena, requiring action by disaster and emergency services personnel to prevent or minimize loss of life or damage to property or natural resources. The term includes the imminent threat of an emergency.

(b) ~~but the~~ The term does not include a state of emergency or disaster declared by the governor pursuant to 10-3-302 or 10-3-303.

(8) "Political subdivision" means any county, city, town, or other legally constituted unit of local government in this state.

(9) "Principal executive officer" means the mayor, presiding officer of the county commissioners, or other chief executive officer of a political subdivision.

(10) "Temporary housing" means unoccupied habitable dwellings, suitable rental housing, mobile homes, or other readily fabricated dwellings."

**Section 2.** Section 45-5-623, MCA, is amended to read:

**"45-5-623. Unlawful transactions with children.** (1) Except as provided for in 16-6-305, a person commits the offense of unlawful transactions with children if the person knowingly:

(a) sells or gives explosives to a child under the age of majority except as authorized under appropriate city ordinances;

(b) sells or gives intoxicating substances other than alcoholic beverages to a child under the age of majority;

(c) sells or gives an alcoholic beverage to a person under 21 years of age;

(d) being a junk dealer, pawnbroker, or secondhand dealer, receives or purchases goods from a child under the age of majority without authorization of the parent or guardian; or

(e) tattoos a child under the age of majority without the explicit in-person consent of the child's parent or guardian. For purposes of this subsection, "tattoo" has the meaning provided in ~~50-2-116(2)(k)(vi)~~ 50-2-116. Failure to adequately verify the identity of a parent or guardian is not an excuse for violation of this subsection.

(2) A person convicted of the offense of unlawful transactions with children shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of a second offense of unlawful transactions with children shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for any term not to exceed 6 months, or both. (See compiler's comments for contingent termination of certain text.)"

**Section 3.** Section 50-1-101, MCA, is amended to read:

**“50-1-101. Definitions.** Unless the context indicates otherwise, in this chapter, the following definitions apply:

(1) “Communicable disease” means ~~a disease designated communicable by the department~~ *an illness because of a specific infectious agent or its toxic products that arises through transmission of that agent or its products from an infected person, animal, or inanimate reservoir to a susceptible host. The transmission may occur either directly or indirectly through an intermediate plant or animal host, a transmitting entity, or the inanimate environment.*

(2) “Department” means the department of public health and human services provided for in 2-15-2201.

(3) “Inanimate reservoir” means *soil, a substance, or a combination of soil and a substance:*

(a) *in which an infectious agent normally lives and multiplies;*

(b) *on which an infectious agent depends primarily for survival; and*

(c) *where an infectious agent reproduces in a manner that allows the infectious agent to be transmitted to a susceptible host.*

(4) “Isolation” means *the physical separation and confinement of an individual or groups of individuals who are infected or reasonably believed to be infected with a communicable disease or possibly communicable disease from nonisolated individuals to prevent or limit the transmission of the communicable disease to nonisolated individuals.*

(5) “Quarantine” means *the physical separation and confinement of an individual or groups of individuals who are or may have been exposed to a communicable disease or possibly communicable disease and who do not show signs or symptoms of a communicable disease, from nonquarantined individuals, to prevent or limit the transmission of the communicable disease to nonquarantined individuals.”*

**Section 4.** Section 50-1-202, MCA, is amended to read:

**“50-1-202. General powers and duties.** The department ~~shall~~:

(1) *shall* study conditions affecting the citizens of the state by making use of birth, death, and sickness records;

(2) *shall* make investigations, disseminate information, and make recommendations for control of diseases and improvement of public health to persons, groups, or the public;

(3) at the request of the governor, *shall* administer any federal health program for which responsibilities are delegated to states;

(4) *shall* inspect and work in conjunction with custodial institutions and Montana university system units periodically as necessary and at other times on request of the governor;

(5) after each inspection made under subsection (4), *shall* submit a written report on sanitary conditions to the governor and to the director of the department of corrections or the commissioner of higher education and include recommendations for improvement in conditions if necessary;

(6) *shall* advise state agencies on location, drainage, water supply, disposal of excreta, heating, plumbing, sewer systems, and ventilation of public buildings;

(7) *shall* develop and administer activities for the protection and improvement of dental health and supervise dentists employed by the state, local boards of health, or schools;

(8) *shall* develop, adopt, and administer rules setting standards for participation in and operation of programs to protect the health of mothers and children, which rules may include programs for nutrition, family planning services, improved pregnancy outcome, and those authorized by Title X of the federal Public Health Service Act and Title V of the federal Social Security Act;

(9) *shall* conduct health education programs;

(10) *shall* provide consultation to school and local community health nurses in the performance of their duties;

(11) *shall* consult with the superintendent of public instruction on health measures for schools;

(12) *shall* develop, adopt, and administer rules setting standards for a program to provide services to children with disabilities, including standards for:

- (a) diagnosis;
- (b) medical, surgical, and corrective treatment;
- (c) aftercare and related services; and
- (d) eligibility;

(13) *shall* provide consultation to local boards of health;

(14) *shall* bring actions in court for the enforcement of the health laws and defend actions brought against the board or department;

(15) *shall* accept and expend federal funds available for public health services;

(16) *must* have the power to use personnel of local departments of health to assist in the administration of laws relating to public health;

(17) *shall* adopt rules imposing fees for the tests and services performed by the department's laboratory. Fees should reflect the actual costs of the tests or services provided. The department may not establish fees exceeding the costs incurred in performing tests and services. All fees must be deposited in the state special revenue fund for the use of the department in performing tests and services.

(18) *shall* adopt and enforce rules regarding ~~the definition of communicable diseases and~~ the reporting and control of communicable diseases;

(19) *shall* adopt and enforce rules regarding the transportation of dead human bodies;

(20) *shall* adopt and enforce rules and standards concerning the issuance of licenses to laboratories that conduct analysis of public water supply systems; ~~and~~

(21) *shall* adopt and enforce minimum sanitation requirements for tattooing as provided in 50-2-116, including regulation of premises, equipment, and methods of operation, solely oriented to the protection of public health and the prevention of communicable disease; *and*

*(22) shall enact or take measures to prevent and alleviate injury from the release of biological, chemical, or radiological agents capable of causing imminent infection, disability, or death."*

**Section 5.** Section 50-1-204, MCA, is amended to read:

**"50-1-204. Quarantine and isolation measures.** The department may adopt and enforce quarantine *or isolation* measures ~~against a state, county, or municipality~~ to prevent the spread of communicable disease. A person who does not comply with quarantine measures shall, on conviction, be fined not less than \$10 or more than \$100. Receipts from fines, except justice's court fines, ~~shall~~ *must* be deposited in the state general fund."

**Section 6.** Section 50-2-101, MCA, is amended to read:

**"50-2-101. Definitions.** As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Communicable disease" means ~~a disease designated as communicable by the department~~ *an illness because of a specific infectious agent or its toxic products that arises through transmission of that agent or its products from an infected person, animal, or inanimate reservoir to a susceptible host. The transmission may occur either directly or indirectly through an intermediate plant or animal host, a transmitting entity, or the inanimate environment.*

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Inanimate reservoir" means *soil, a substance, or a combination of soil and a substance:*

(a) *in which an infectious agent normally lives and multiplies;*

(b) *on which an infectious agent depends primarily for survival; and*

(c) *where an infectious agent reproduces in a manner that allows the infectious agent to be transmitted to a susceptible host.*

~~(3)~~(4) "Institutional control" means a legal or regulatory mechanism designed to protect public health and safety or the environment that:

(a) limits access to or limits or conditions the use of environmentally contaminated property or media;

(b) provides for the protection or preservation of environmental cleanup measures; or

(c) informs the public that property is or may be environmentally impaired or that there are limitations on the access to or use of environmentally contaminated properties or media.

(5) "Isolation" means *the physical separation and confinement of an individual or groups of individuals who are infected or reasonably believed to be infected with a communicable disease or possibly communicable disease from nonisolated individuals to prevent or limit the transmission of the communicable disease to nonisolated individuals.*

~~(4)~~(6) "Local board" means a county, city, city-county, or district board of health.

~~(5)~~(7) "Local health officer" means a county, city, city-county, or district health officer appointed by the local board.

~~(6)~~(8) "Physician" means a physician legally authorized to practice medicine in this state.

(9) "Quarantine" means the physical separation and confinement of an individual or groups of individuals who are or may have been exposed to a communicable disease or possibly communicable disease and who do not show signs or symptoms of a communicable disease, from nonquarantined individuals, to prevent or limit the transmission of the communicable disease to nonquarantined individuals."

**Section 7.** Section 50-2-116, MCA, is amended to read:

**"50-2-116. Powers and duties of local boards.** (1) Local boards shall:

- (a) appoint a local health officer who is a physician or a person with a master's degree in public health or the equivalent and with appropriate experience, as determined by the department, and shall fix the health officer's salary;
- (b) elect a presiding officer and other necessary officers;
- (c) employ necessary qualified staff;
- (d) adopt bylaws to govern meetings;
- (e) hold regular meetings quarterly and hold special meetings as necessary;
- (f) supervise destruction and removal of all sources of filth that cause disease;
- (g) guard against the introduction of communicable disease;
- (h) supervise inspections of public establishments for sanitary conditions;
- (i) 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 that is 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.

(2) Local boards may:

- (a) ~~adopt and enforce isolation and quarantine persons who have~~ *adopt and enforce isolation and quarantine persons who have measures to prevent the spread of communicable diseases;*
- ~~(b) require isolation of persons or things that are infected with communicable diseases;~~
- ~~(b)~~ (b) furnish treatment for persons who have communicable diseases;
- ~~(c)~~ (c) prohibit the use of places that are infected with communicable diseases;
- ~~(d)~~ (d) require and provide means for disinfecting places that are infected with communicable diseases;
- ~~(e)~~ (e) accept and spend funds received from a federal agency, the state, a school district, or other persons;
- ~~(f)~~ (f) contract with another local board for all or a part of local health services;
- ~~(g)~~ (g) reimburse local health officers for necessary expenses incurred in official duties;
- ~~(h)~~ (h) abate nuisances affecting public health and safety or bring action necessary to restrain the violation of public health laws or rules;

~~(i)~~ adopt necessary fees to administer regulations for the control and disposal of sewage from private and public buildings. The fees must be deposited with the county treasurer.

~~(j)~~ adopt rules that do not conflict with 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, on sanitation in public buildings that affects public health;

(iv) for heating, ventilation, water supply, and waste disposal in public accommodations that might endanger human lives;

(v) subject to the provisions of 50-2-130, for the maintenance of sewage treatment systems that do not discharge an effluent directly into state waters and that are not required to have an operating permit as required by rules adopted under 75-5-401; and

(vi) for the regulation, as necessary, of the practice of tattooing, which may include registering tattoo artists, inspecting tattoo establishments, adopting fees, and also adopting sanitation standards that are not less stringent than standards adopted by the department pursuant to 50-1-202. For the purposes of this subsection, "tattoo" means making permanent marks on the skin by puncturing the skin and inserting indelible colors.

~~(k)~~ adopt regulations for the establishment of institutional controls that have been selected or approved by the:

(i) 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

(ii) 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."

**Section 8.** Section 50-2-118, MCA, is amended to read:

**"50-2-118. Powers and duties of local health officers.** (1) Local health officers or their authorized representatives shall:

(a) make inspections for sanitary conditions;

(b) as directed by the local board, issue written orders for the destruction and removal of filth ~~which~~ *that* might cause disease;

(c) with written approval of the department, order buildings or facilities where people congregate closed during epidemics;

(d) on forms provided by the department, report communicable diseases to the department each week;

(e) before the first day of January, April, July, and October, give a report to the local board of sanitary conditions in the county, city, city-county, or district, together with a detailed account of his activities, on forms and containing information required by the department;

(f) before the 10th day after the report is given to the local board, send a copy of the report required by subsection (1)(e) of this section to the department;

(g) ~~as prescribed by rules adopted by the department,~~ establish and maintain ~~quarantines~~ *quarantine and isolation measures as enacted by the local board of health;*

(h) as prescribed by rules adopted by the department, supervise the disinfection of places at the expense of the local board when a period of quarantine ends;

(i) notify the department of ~~his~~ *the local health officer's* appointment and changes in membership of the local board;

(j) file a complaint with the appropriate court if this chapter or rules adopted by the local board or state department under this chapter are violated;

(k) validate state licenses issued by the department in accordance with chapters 50 through 53 of this title.

(2) With approval of the department, local health officers may forbid persons to assemble in a place if the assembly endangers public health.

(3) A local health officer who is a physician may be placed in charge of a communicable disease hospital, but a local health officer who is a physician is not required to act as a physician to the indigent.

(4) A local health officer who is not a physician ~~shall~~ *may* not act as a physician to anyone."

**Section 9.** Section 50-2-130, MCA, is amended to read:

**"50-2-130. Local regulations no more stringent than state regulations or guidelines.** (1) After April 14, 1995, except as provided in subsections (2) through (4) or unless required by state law, the local board may not adopt a rule under 50-2-116(1)(i), ~~(2)(k)(iii)~~ (2)(j)(iii), or ~~(2)(k)(v)~~ (2)(j)(v) that is more stringent than the comparable state regulations or guidelines that address the same circumstances. The local board may incorporate by reference comparable state regulations or guidelines.

(2) The local board may adopt a rule to implement 50-2-116(1)(i), ~~(2)(k)(iii)~~ (2)(j)(iii), or ~~(2)(k)(v)~~ (2)(j)(v) that is more stringent than comparable state regulations or guidelines only if the local board makes a written finding, after a public hearing and public comment and based on evidence in the record, that:

(a) the proposed local standard or requirement protects public health or the environment; and

(b) the local board standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the local board's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed local standard or requirement.

(4) (a) A person affected by a rule of the local board adopted after January 1, 1990, and before April 14, 1995, that that person believes to be more stringent than comparable state regulations or guidelines may petition the local board to review the rule. If the local board determines that the rule is more stringent than comparable state regulations or guidelines, the local board shall comply with this section by either revising the rule to conform to the state regulations or guidelines or ~~by~~ making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the



petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The local board may charge a petition filing fee in an amount not to exceed \$250.

(b) A person may also petition the local board for a rule review under subsection (4)(a) if the local board adopts a rule after January 1, 1990, in an area in which no state regulations or guidelines existed and the state government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted local board rule."

**Section 10.** Section 50-16-603, MCA, is amended to read:

**"50-16-603. Confidentiality of health care information.** Health care information in the possession of the department, a local board, a local health officer, or ~~the~~ *the entity's* authorized representatives may not be released except:

(1) for statistical purposes, if no identification of individuals can be made from the information released;

(2) when the health care information pertains to a person who has given written consent to the release and has specified the type of information to be released and the person or entity to whom it may be released;

(3) to medical personnel in a medical emergency as necessary to protect the health, life, or well-being of the named person;

(4) as allowed by Title 50, chapters 17 and 18;

(5) to another state or local public health agency, including those in other states, whenever necessary to continue health services to the named person or to undertake public health efforts to prevent or interrupt the transmission of a communicable disease *or to alleviate and prevent injury caused by the release of biological, chemical, or radiological agents capable of causing imminent disability, death, or infection;*

(6) in the case of a minor, as required by 41-3-201 or pursuant to an investigation under 41-3-202. If the health care information is required in a subsequent court proceeding involving child abuse, the information may be disclosed only in camera and documents containing the information must be sealed by the court upon conclusion of the proceedings.

(7) to medical personnel, the department, a local health officer or board, or a district court when necessary to implement or enforce state statutes or state or local health rules concerning the prevention or control of diseases designated as reportable pursuant to 50-1-202, if the release does not conflict with any other provision contained in this part."

**Section 11. Effective date.** [This act] is effective on passage and approval.

Approved April 17, 2003

## CHAPTER NO. 392

[HB 525]

AN ACT REVISING THE CLASSIFICATION FOR A THIRD-CLASS ENGINEER LICENSE TO OPERATE A STEAM BOILER; ALLOWING A PERSON TO BE LICENSED AS OTHER THAN A FIRST-CLASS OR SECOND-CLASS ENGINEER TO OPERATE A STEAM BOILER BY

COMPLETING A COURSE OF INSTRUCTION APPROVED BY THE DEPARTMENT, BY PASSING A WRITTEN EXAMINATION, AND BY HAVING AN ENGINEER INFORM THE DEPARTMENT THAT THE APPLICANT IS COMPETENT TO OPERATE THE TYPE OF BOILER FOR WHICH LICENSURE IS SOUGHT; AND AMENDING SECTIONS 50-74-303 AND 50-74-304, MCA.

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

**Section 1.** Section 50-74-303, MCA, is amended to read:

**“50-74-303. Engineer’s license classifications.** (1) Engineers entrusted with the operation, care, and management of steam or water boilers and steam machinery, as specified in 50-74-302, are divided into five classes, ~~namely:~~ *including* first-class engineers, second-class engineers, third-class engineers, agricultural-class engineers, and low-pressure engineers.

(2) Licenses for the operation of steam or water boilers and steam machinery are divided into five classifications in accordance with the following schedule:

(a) First-class engineers are licensed to operate all classes, pressures, and temperatures of steam and water boilers and steam-driven machinery with the exception of traction and hoisting engines.

(b) Second-class engineers are licensed to operate steam boilers operating not in excess of 250 pounds per square inch gauge saturated steam pressure, water boilers operating not in excess of 375 pounds per square inch gauge pressure and 450 degrees F temperature, and steam-driven machinery not to exceed 100 horsepower per unit, with the exception of traction and hoisting engines.

(c) Third-class engineers are licensed to operate steam boilers operating not in excess of ~~100~~ 150 pounds per square inch gauge saturated steam pressure *and not in excess of 150 horsepower per hour* and water boilers operating not in excess of 160 pounds per square inch gauge pressure and 350 degrees F temperature.

(d) Agricultural-class engineers are licensed to operate steam boilers that operate not in excess of 150 pounds per square inch saturated steam pressure and that:

(i) are not operated for more than 6 months of the year; and

(ii) are not operated for purposes other than the harvesting or processing of agricultural products.

(e) Low-pressure engineers are licensed to operate steam boilers operating not in excess of 15 pounds per square inch gauge pressure and water boilers operating not in excess of 50 pounds per square inch gauge pressure and 250 degrees F temperature.”

**Section 2.** Section 50-74-304, MCA, is amended to read:

**“50-74-304. Requirements for engineer’s license.** Each applicant for an engineer’s license must be physically and mentally capable of performing the required duties and ~~shall~~ *must* meet the following minimum requirements for the class of engineer’s license for which application is being made:

(1) ~~An~~ *Except as provided in subsection (6),* an applicant for a low-pressure engineer’s license must be 18 years of age or older, must have at least 3 months’ full-time experience in the operation of a boiler in this classification under an engineer who holds a valid low-pressure or higher license, is required to

successfully pass a written examination prescribed by the department, and must be found competent to operate a boiler in this classification by the department.

(2) ~~An~~ *Except as provided in subsection (6), an applicant for an agricultural-class engineer's license must be 18 years of age or older, is required to successfully pass a written examination prescribed by the department, and must be found competent to operate a boiler in this classification by the department.*

(3) ~~An~~ *Except as provided in subsection (6), an applicant for a third-class engineer's license must be 18 years of age or older, must have at least 6 months' full-time experience in the operation of a boiler in this classification under an engineer holding a valid third-class or higher license, is required to successfully pass a written examination prescribed by the department, and must be found competent to operate a boiler in this classification by the department.*

(4) ~~An~~ *An applicant for a second-class engineer's license must be 18 years of age or older and:*

(a) *must have at least 2 years' full-time experience in the operation of a boiler and steam-driven machinery in this classification under an engineer holding a valid second-class or first-class license, is required to successfully pass a written examination prescribed by the department, and must be found competent to operate a boiler and steam-driven machinery in this classification by the department; or*

(b) ~~shall~~ *must hold a valid third-class engineer's license, must have at least 1 year's full-time experience in the operation of a boiler and steam-driven machinery in this classification under an engineer holding a valid second-class or first-class license, is required to successfully pass a written examination prescribed by the department, and must be found competent to operate a boiler and steam-driven machinery in this classification by the department.*

(5) ~~An~~ *An applicant for a first-class engineer's license must be 18 years of age or older and:*

(a) *must have at least 3 years' full-time experience in the operation of a boiler and steam-driven machinery in this classification under an engineer holding a valid first-class license, is required to successfully pass a written examination prescribed by the department, and must be found competent to operate a boiler and steam-driven machinery in this classification by the department;*

(b) ~~shall~~ *must hold a valid second-class engineer's license, must have at least 1 year's full-time experience in the operation of a boiler and steam-driven machinery in this classification under an engineer holding a valid first-class license, is required to successfully pass a written examination prescribed by the department, and must be found competent to operate a boiler and steam-driven machinery in this classification by the department; or*

(c) ~~shall~~ *must hold a valid third-class engineer's license, must have at least 2 year's full-time experience in the operation of a boiler and steam-driven machinery in this classification under an engineer holding a valid first-class license, is required to successfully pass a written examination prescribed by the department, and must be found competent to operate a boiler and steam-driven machinery in this classification by the department.*

(6) *As an alternative to the requirements of subsections (1) through (3), an applicant who is 18 years of age or older may apply for and be issued a license for any of the three classes of licenses provided for in subsections (1) through (3) if:*

(a) *the applicant completes a training course acceptable to the department that is specific to the class of boiler license sought by the applicant and successfully passes a written examination administered by the department that is specific to the class of boiler license sought by the applicant; and*

(b) *an engineer with a license at least equal to the class of boiler license sought by the applicant informs the department that the applicant has worked with the type of boiler for which a license is sought under the engineer's supervision for a minimum of 40 hours and that the applicant is competent to operate a boiler of the class for which licensure is sought by the applicant."*

Approved April 18, 2003

## CHAPTER NO. 393

[HB 556]

AN ACT REVISING THE REGISTRATION PERIOD FOR CERTAIN VEHICLES THAT ARE REGISTERED IN A MANNER THAT ALLOWS THEM TO DISPLAY AMATEUR RADIO OPERATOR LICENSE PLATES; DIRECTING THE DEPARTMENT OF JUSTICE TO ADOPT RULES THAT PROVIDE A SEPARATE REGISTRATION PERIOD FOR MOTOR HOMES THAT DISPLAY AMATEUR RADIO OPERATOR LICENSE PLATES; AMENDING SECTIONS 61-3-313 AND 61-3-526, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 61-3-313, MCA, is amended to read:

**"61-3-313. Vehicles subject to staggered registration.** For purposes of 61-3-313 through 61-3-316, "vehicle" means a motor vehicle, as defined in 61-1-102, that is subject to annual registration in this state except:

- (1) vehicles owned or leased and operated by the government of the United States or by the state of Montana or a political subdivision of the state;
- (2) mobile homes and motor homes;
- (3) vehicles that are registered in accordance with or subject to 61-3-332(10)(c)(i)(A); or 61-3-411, ~~or 61-3-421~~;
- (4) trucks exceeding a 1-ton rated capacity;
- (5) trailers, semitrailers, tractors, buses, motorcycles, quadricycles, and motor-driven cycles;
- (6) special mobile equipment as defined in 61-1-104;
- (7) motor vehicles registered as part of a fleet under 61-3-318; and
- (8) apportionable vehicles registered as part of a fleet, as defined in 61-3-712, that is subject to the provisions of 61-3-711 through 61-3-733."

**Section 2.** Section 61-3-526, MCA, is amended to read:

**"61-3-526. Registration of motor homes and travel trailers — reregistration by mail allowed.** (1) ~~All~~ *Except for a motor home displaying amateur radio operator license plates as provided in 61-3-421, all registrations*

of motor homes and travel trailers expire annually on April 30. Application for registration or reregistration must be made to the county treasurer not later than June 15. Reregistration may be made by mail in the manner provided in 61-3-535. If the ownership of a motor home or travel trailer is transferred during the registration year, it must be reregistered and relicensed as provided by statute.

(2) The owner of a motor home or travel trailer registered under the provisions of this section is entitled to operate ~~such~~ the vehicle between May 1 and June 15 without displaying the registration certificate of the current registration year if the owner, during that period, displays upon the motor home or travel trailer the number plates, plate, or decal assigned ~~thereto~~ to the motor home or travel trailer for the previous registration year.

(3) *The department shall adopt rules to assign a registration period for motor homes that display amateur radio operator license plates.*

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

Approved April 18, 2003

## CHAPTER NO. 394

[HB 569]

AN ACT PROVIDING FOR THE MONTANA AT-HOME INFANT CARE PROGRAM FOR LOW-INCOME PARENTS IN LIEU OF CHILD CARE ASSISTANCE; PROVIDING ELIGIBILITY REQUIREMENTS; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1. At-home infant care program — definition.** (1) There is an at-home infant care program for low-income families in which a parent provides full-time child care for the family's infant under 2 years of age that will be funded if a specific appropriation is added to the general appropriations act or by budget amendment if funds become available from federal or private sources. Subject to subsection (2), the family may receive a payment in lieu of child-care assistance if the family meets the following eligibility requirements:

(a) The family is not receiving financial assistance under Title 53, chapter 4, parts 2 and 6.

(b) The family has not previously received a total of 24 months of at-home infant care assistance under this section.

(c) The family is at or below 150% of the federal poverty level.

(d) The family has fulfilled the following work requirements for 1 out of the 3 months prior to entering the program:

(i) 120 hours a month for two-parent families, which may be the contribution of one or both parents;

(ii) 60 hours a month for single-parent families;

(iii) 40 hours a month for single-parent families who are attending postsecondary education or training.

(e) A parent must be 18 years of age or older or, if under 18 years of age, have attained an equivalency of completion of secondary education, as provided in 20-7-131, or a high school diploma.

(f) A parent must meet any additional requirements as provided in administrative rules.

(2) A parent who is under 18 years of age and attending high school or a program for equivalency of completion of secondary education, as provided in 20-7-131, may receive benefits for months outside of the regular school year.

(3) For the purposes of this section, "parent" means a birth parent, a stepparent, a foster parent, or a guardian who is acting in loco parentis.

(4) The maximum rate of assistance allowed is equal to the amount of child-care assistance for infant family care for the appropriate district, as adopted by the department by rule. The family may not receive subsidies for child care for other children in the family.

(5) A participating family shall report income and other family changes as specified by rule. State agencies shall treat income received under this program as earned income.

(6) Family members may participate in education and work activities as long as one or both parents provide care full time for the infant.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 52, chapter 2, part 7, and the provisions of Title 52, chapter 2, part 7, apply to [section 1].

**Section 3. Effective date.** [This act] is effective July 1, 2003.

Approved April 17, 2003

## CHAPTER NO. 395

[HB 610]

AN ACT MODIFYING THE PUBLIC HEARING PROCEDURES OF WATER AND SEWER DISTRICTS RELATING TO RATE INCREASES; AMENDING SECTION 7-13-2275, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 7-13-2275, MCA, is amended to read:

**"7-13-2275. Procedure relating to ordinances and resolutions — rates, fees, and charges established.** (1) The ayes and noes must be taken upon the passage of all ordinances or resolutions and entered upon the journal of the proceedings of the board of directors. An ordinance or resolution may not be passed or become effective without the affirmative votes of at least a majority of the total members of the board.

(2) The enacting clause of all ordinances passed by the board must be in these words: "Be it ordained by the board of directors of .... district as follows:"

(3) All resolutions and ordinances must be signed by the president of the board and attested by the secretary.

(4) ~~Prior~~ Except as provided in subsection (5), prior to the passage or enactment of an ordinance or resolution imposing, establishing, changing, or

increasing rates, fees, or charges for services or facilities, the board shall order a public hearing.

(a) Notice of the public hearing must be published as provided in 7-1-2121. The published notice must contain:

(i) the date, time, and place of the hearing;

(ii) a brief statement of the proposed action; and

(iii) the address and telephone number of a person who may be contacted for further information regarding the hearing.

(b) The notice must also be mailed to all persons who own property in the district and to all customers of the district at least 7 days and not more than 30 days prior to the public hearing. The mailed notice must contain an estimate of the amount that the property owner or customer will be charged under the proposed ordinance or resolution.

(c) Any interested person, corporation, or company may be present, represented by counsel, and testify at the hearing.

(d) The hearing may be continued by the board as necessary. After the public hearing, the board may, by resolution, impose, establish, change, or increase rates, fees, or charges.

*(5) A public hearing is not required for a cumulative rate increase of less than or equal to 5% within a 12-month period if the board provides notification of the increase to persons within the district on whom the rate will be imposed at least 10 days prior to the passage or enactment of the ordinance or resolution implementing the increase.*

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

Approved April 18, 2003

## CHAPTER NO. 396

[HB 647]

AN ACT GENERALLY REVISING THE LAWS GOVERNING HEALTH CARE INFORMATION TO CONFORM TO FEDERAL HEALTH CARE PRIVACY LEGISLATION, INCLUDING THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996; IMPOSING A DUTY ON A PERSON AUTHORIZED TO ACT AS A HEALTH CARE REPRESENTATIVE FOR AN INDIVIDUAL WITH RESPECT TO THE INDIVIDUAL'S HEALTH CARE INFORMATION TO ACT IN GOOD FAITH TO REPRESENT THE BEST INTERESTS OF THE INDIVIDUAL; AMENDING SECTIONS 41-1-401, 41-1-402, 41-1-403, 50-5-106, 50-16-201, 50-16-502, 50-16-504, 50-16-535, 50-16-1009, 50-19-402, 50-19-405, 50-19-406, AND 53-24-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 41-1-401, MCA, is amended to read:

**"41-1-401. Health professional defined Definitions.** *As used in this part, the following definitions apply:*

(1) "Emancipated minor" means an individual under 18 years of age who:

(a) is or has been married;

(b) is separated from the individual's parent, parents, or legal guardian and is self-supporting; or

(c) has been granted the right to consent to medical treatment pursuant to an order of limited emancipation granted by a court pursuant to 41-3-438.

(2) "Health care facility" has the meaning provided in 50-5-101.

(3) "Health professional" ~~as used in this part shall include~~ includes only those persons licensed in Montana as physicians, psychiatrists, psychologists, advanced practice registered nurses, ~~or~~ dentists, physician assistants-certified, professional counselors, or social workers."

**Section 2.** Section 41-1-402, MCA, is amended to read:

**"41-1-402. Validity of consent of minor for health services.** (1) This part does not limit the right of an emancipated minor to consent to the provision of health services or to control access to protected health care information under applicable law.

~~(1)(2)~~ (2) The consent to the provision of ~~medical or surgical care or health services and to control access to protected health care information by a hospital or public clinic health care facility~~ or to the performance of ~~medical or surgical care or health services by a physician licensed to practice medicine in this state~~ a health professional may be given by a minor who professes or is found to meet any of the following descriptions:

(a) a minor who ~~is or was ever~~ professes to be or to have been married or ~~has to have had a child or graduated from high school or is emancipated;~~

(b) a minor who ~~has been~~ professes to be or is found to be separated from the minor's parent, parents, or legal guardian for whatever reason and is providing self-support by whatever means;

(c) a minor who professes or is found to be pregnant or afflicted with any reportable communicable disease, including a sexually transmitted disease, or drug and substance abuse, including alcohol. This self-consent applies only to the prevention, diagnosis, and treatment of those conditions specified in this subsection. The self-consent in the case of pregnancy, a sexually transmitted disease, or drug and substance abuse also obliges the health professional, if the health professional accepts the responsibility for treatment, to counsel the minor or to refer the minor to another health professional for counseling.

(d) a minor who needs emergency care, including transfusions, without which the minor's health will be jeopardized. If emergency care is rendered, the parent, parents, or legal guardian must be informed as soon as practical except under the circumstances mentioned in this subsection ~~(1)~~ (2).

~~(2)~~(3) A minor who has had a child may give effective consent to health service for the child.

~~(3)~~(4) A minor may give consent for health care for the minor's spouse if the spouse is unable to give consent by reason of physical or mental incapacity."

**Section 3.** Section 41-1-403, MCA, is amended to read:

**"41-1-403. Release of information by physician health professional.** (1) ~~A treating physician or other~~ Except with regard to an emancipated minor, a health professional may, ~~but shall not be obligated to,~~ inform the spouse, parent, custodian, or guardian of ~~any such~~ a minor in the circumstances as enumerated in 41-1-402 of any treatment given or needed when:



- (a) in the judgment of the health professional, severe complications are present or anticipated;
- (b) major surgery or prolonged hospitalization is needed;
- (c) failure to inform the parent, parents, or legal guardian would seriously jeopardize the safety and health of the minor patient, younger siblings, or the public;
- (d) ~~to inform~~ *informing* them would benefit the minor's physical and mental health and family harmony; or
- (e) the ~~hospital~~ *health professional or health care facility providing treatment* desires a third-party commitment to pay for services rendered or to be rendered.

(2) Notification or disclosure to the ~~spouse,~~ parent, parents, or legal guardian by the health professional ~~shall may not~~ constitute libel or slander, a violation of the right of privacy, a violation of the rule of privileged communication, or any other legal basis of liability. ~~When~~ *If* the minor is found not to be pregnant or not afflicted with a sexually transmitted disease or not suffering from drug abuse or substance abuse, including alcohol, then ~~no~~ information with respect to any appointment, examination, test, or other health procedure ~~shall may not~~ be given to the parent, parents, or legal guardian, if they have not ~~been~~ already *been* informed as permitted in this part, without the consent of the minor."

**Section 4.** Section 50-5-106, MCA, is amended to read:

**"50-5-106. Records and reports required of health care facilities — confidentiality.** Health care facilities shall keep records and make reports as required by the department. Before February 1 of each year, every licensed health care facility shall submit an annual report for the preceding calendar year to the department. The report must be on forms and contain information specified by the department. Information received by the department through reports, inspections, or provisions of parts 1 and 2 may not be disclosed in a way which would identify patients. A department employee who discloses information that would identify a patient must be dismissed from employment and subject to the provisions of 45-7-401 and 50-16-551, *if applicable*, unless the disclosure was authorized ~~in writing by the patient, the patient's guardian, or the patient's agent in accordance with Title 50, chapter 16, part 5 as permitted by law.~~ Information and statistical reports from health care facilities which are considered necessary by the department for health planning and resource development activities must be made available to the public and the health planning agencies within the state. Applications by health care facilities for certificates of need and any information relevant to review of these applications, pursuant to part 3, must be accessible to the public."

**Section 5.** Section 50-16-201, MCA, is amended to read:

**"50-16-201. Definitions.** As used in this part, the following definitions apply:

- (1) (a) "Data" means written reports, notes, or records or oral reports or proceedings created by or at the request of a utilization review, peer review, medical ethics review, quality assurance, or quality improvement committee of a health care facility that are used exclusively in connection with *quality assessment or improvement activities, including* the professional training, supervision, or discipline of a medical practitioner by a health care facility.

(b) The term does not include:

(i) incident reports or occurrence reports; or

(ii) *health care information that is used in whole or in part to make decisions about an individual who is the subject of the health care information.*

(2) "Health care facility" has the meaning provided in 50-5-101.

(3) (a) "Incident reports" or "occurrence reports" means a written business record of a health care facility, created in response to an untoward event, such as a patient injury, adverse outcome, or interventional error, in order to ensure a prompt evaluation of the event.

(b) The terms do not include any subsequent evaluation of the event in response to an incident report or occurrence report by a utilization review, peer review, medical ethics review, quality assurance, or quality improvement committee.

(4) "Medical practitioner" means an individual licensed by the state of Montana to engage in the practice of medicine, osteopathy, podiatry, optometry, or a nursing specialty described in 37-8-202(5) or licensed as a physician assistant-certified pursuant to 37-20-203."

**Section 6.** Section 50-16-502, MCA, is amended to read:

**"50-16-502. Legislative findings.** The legislature finds that:

(1) health care information is personal and sensitive information that if improperly used or released may do significant harm to a patient's interests in privacy and health care or other interests;

(2) patients need access to their own health care information as a matter of fairness, to enable them to make informed decisions about their health care and to correct inaccurate or incomplete information about themselves;

(3) in order to retain the full trust and confidence of patients, health care providers have an interest in ~~assuring~~ *ensuring* that health care information is not improperly disclosed and in having clear and certain rules for the disclosure of health care information;

(4) persons other than health care providers obtain, use, and disclose health record information in many different contexts and for many different purposes. It is the public policy of this state that a patient's interest in the proper use and disclosure of ~~his~~ *the patient's* health care information survives even when the information is held by persons other than health care providers.

(5) the movement of patients and their health care information across state lines, access to and exchange of health care information from automated data banks, and the emergence of multistate health care providers creates a compelling need for uniform law, rules, and procedures governing the use and disclosure of health care information.

(6) *the enactment of federal health care privacy legislation and the adoption of rules pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d, et seq., require health care providers subject to that legislation to provide significant privacy protection for health care information and the provisions of this part are no longer necessary for those health care providers; and*

(7) *because the provisions of HIPAA do not apply to some health care providers, it is important that these health care providers continue to adhere to this part."*

**Section 7.** Section 50-16-504, MCA, is amended to read:

**“50-16-504. Definitions.** As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) “Audit” means an assessment, evaluation, determination, or investigation of a health care provider by a person not employed by or affiliated with the provider, to determine compliance with:

- (a) statutory, regulatory, fiscal, medical, or scientific standards;
- (b) a private or public program of payments to a health care provider; or
- (c) requirements for licensing, accreditation, or certification.

(2) “Directory information” means information disclosing the presence and the general health condition of a patient who is an inpatient in a health care facility or who is receiving emergency health care in a health care facility.

(3) “General health condition” means the patient’s health status described in terms of critical, poor, fair, good, excellent, or terms denoting similar conditions.

(4) “Health care” means any care, service, or procedure provided by a health care provider, including medical or psychological diagnosis, treatment, evaluation, advice, or other services that affect the structure or any function of the human body.

(5) “Health care facility” means a hospital, clinic, nursing home, laboratory, office, or similar place where a health care provider provides health care to patients.

(6) “Health care information” means any information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of a patient and relates to the patient’s health care. The term includes any record of disclosures of health care information.

(7) “Health care provider” means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession. ~~The term does not include a person who provides health care solely through the sale or dispensing of drugs or medical devices.~~

(8) “Institutional review board” means a board, committee, or other group formally designated by an institution or authorized under federal or state law to review, approve the initiation of, or conduct periodic review of research programs to assure the protection of the rights and welfare of human research subjects.

(9) “Maintain”, as related to health care information, means to hold, possess, preserve, retain, store, or control that information.

(10) “Patient” means an individual who receives or has received health care. The term includes a deceased individual who has received health care.

(11) “Peer review” means an evaluation of health care services by a committee of a state or local professional organization of health care providers or a committee of medical staff of a licensed health care facility. The committee must be:

- (a) authorized by law to evaluate health care services; and
- (b) governed by written bylaws approved by the governing board of the health care facility or an organization of health care providers.

(12) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

(13) "Reasonable fee" means the charge, as provided for in 50-16-540, for duplicating, searching for, or handling recorded health care information."

**Section 8. Limit on applicability.** The provisions of this part apply only to a health care provider that is not subject to the privacy provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d, et seq., and administrative rules adopted in connection with HIPAA.

**Section 9.** Section 50-16-535, MCA, is amended to read:

**"50-16-535. 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 ~~consented~~ *authorized* in writing ~~to~~ 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 ~~his~~ *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 ~~his~~ *the patient's* health care or unless authorized under subsection (1)(i);

(h) the health care information is relevant to a proceeding brought under 50-16-551 through 50-16-553;

(i) 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

(j) the health care information is requested pursuant to an investigative subpoena issued under 46-4-301 *or a similar federal law*.

(2) Nothing in this part authorizes 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."

**Section 10.** Section 50-16-1009, MCA, is amended to read:

**"50-16-1009. Confidentiality of records — notification of contacts — penalty for unlawful disclosure.** (1) ~~Except as provided in subsection (2),~~ a person may not disclose or be compelled to disclose the identity of a subject of an

HIV-related test or the results of a test in a manner that permits identification of the subject of the test, except to the extent allowed under the Uniform Health Care Information Act, Title 50, chapter 16, part 5, *the Government Health Care Information Act, Title 50, chapter 16, part 6, or applicable federal law.*

~~(2) A local board, local health officer, or the department may disclose the identity of the subject of an HIV-related test or the test results only to the extent allowed by the Government Health Care Information Act, Title 50, chapter 16, part 6, unless it is in possession of that information because a health care provider employed by it provided health care to the subject, in which case the Uniform Health Care Information Act governs the release of that information.~~

~~(3)(2)~~ If a health care provider informs the subject of an HIV-related test that the results are positive, the provider shall encourage the subject to notify persons who are potential contacts. If the subject is unable or unwilling to notify all contacts, the health care provider may ask the subject to disclose voluntarily the identities of the contacts and to authorize notification of those contacts by a health care provider. A notification may state only that the contact may have been exposed to HIV and may not include the time or place of possible exposure or the identity of the subject of the test.

~~(4)(3)~~ A person who discloses or compels another to disclose confidential health care information in violation of this section is guilty of a misdemeanor punishable by a fine of \$1,000 or imprisonment for 1 year, or both."

**Section 11.** Section 50-19-402, MCA, is amended to read:

**"50-19-402. Statement of policy — access to information.** (1) The prevention of fetal, infant, and child deaths is both the policy of the state of Montana and a community responsibility. Many community professionals have expertise that can be used to promote the health, safety, and welfare of fetuses, infants, and children. The use of these professionals in reviewing fetal, infant, and child deaths can lead to a greater understanding of the causes of death and the methods of preventing deaths. It is the intent of the legislature to encourage local communities to establish voluntary multidisciplinary fetal, infant, and child mortality review teams to study the incidence and causes of fetal, infant, and child deaths.

(2) A health care provider may disclose information about a patient without the patient's authorization or without the authorization of the representative of a patient who is deceased upon request of a local fetal, infant, and child mortality review team. The review team may request and may receive information from a county attorney as provided in 44-5-303(4) and from a health care provider as ~~provided permitted in 50-16-525 after the review team has considered whether the disclosure of the information by the provider satisfies the criteria provided in 50-16-529(6)~~ *Title 50, chapter 16, part 5, or applicable federal law.* The review team shall maintain the confidentiality of the information received.

(3) The local fetal, infant, and child mortality review team may only:

- (a) compile statistics of fetal, infant, and child mortality;
- (b) analyze the preventable causes of fetal, infant, and child deaths, including child abuse and neglect; and
- (c) recommend measures to prevent future fetal, infant, and child deaths."

**Section 12.** Section 50-19-405, MCA, is amended to read:

**“50-19-405. Unauthorized disclosure by review team member — civil penalty.** A person aggrieved by the use of information obtained pursuant to 50-19-402(2) for a purpose not authorized by 50-19-402(3) or by a disclosure of that information in violation of 50-19-402(2) by a member of a local fetal, infant, and child mortality review team may bring a civil action in the district court of the county of the person’s residence for damages, costs, and fees as provided in 50-16-553(6) through (8) or [section 23].”

**Section 13.** Section 50-19-406, MCA, is amended to read:

**“50-19-406. Unauthorized disclosure by review team member — misdemeanor.** A member of a local fetal, infant, and child mortality review team who knowingly uses information obtained pursuant to 50-19-402(2) for a purpose not authorized by 50-19-402(3) or who discloses that information in violation of 50-19-402(2) is guilty of a misdemeanor and upon conviction is punishable as provided in ~~50-16-551~~ 46-18-212.”

**Section 14.** Section 53-24-306, MCA, is amended to read:

**“53-24-306. Records of chemically dependent persons, intoxicated persons, and family members.** (1) The registration and other records of treatment facilities shall remain confidential and are privileged to the patient.

(2) Notwithstanding subsection (1), the department may make available in accordance with Title 50, chapter 16, part 5, *or other applicable law* information from patients’ records for purposes of research into the causes and treatment of chemical dependency. Information under this subsection ~~shall~~ may not be published in a way that discloses patients’ names or other identifying information.”

**Section 15. Legislative findings.** The legislature finds that:

(1) health care information is personal and sensitive information that if improperly used or released may do significant harm to a patient’s interests in privacy and health care or other interests;

(2) the enactment of federal health care privacy legislation and the adoption of rules pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d, et seq., provide significant privacy protection for health care information with respect to health care providers subject to HIPAA;

(3) for health care providers subject to the health care information privacy protections of HIPAA, the applicability of the provisions of Title 50, chapter 16, part 5, relating to health care privacy is unnecessary and may result in significant practical difficulties;

(4) it is in the best interest of the citizens of Montana to have certain requirements, with respect to the use or release of health care information by health care providers, that are more restrictive than or additional to the health care privacy protections of HIPAA.

**Section 16. Applicability.** [Sections 15 through 24] apply only to health care providers subject to the health care information privacy protections of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d, et seq., and administrative rules adopted in connection with HIPAA.

**Section 17. Definitions.** As used in [sections 15 through 24], unless the context indicates otherwise, the following definitions apply:

(1) "Health care" means care, services, or supplies provided by a health care provider that are related to the health of an individual. Health care includes but is not limited to the following:

(a) preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care and counseling, service, assessment, or procedure with respect to an individual's physical or mental condition; or

(b) the sale or dispensing of any drug, device, equipment, or other item in accordance with a prescription.

(2) "Health care facility" means a hospital, clinic, nursing home, laboratory, office, or similar place where a health care provider provides health care to patients.

(3) "Health care information" means any information, whether oral or recorded in any form or medium, that:

(a) is created or received by a health care provider;

(b) relates to the past, present, or future physical or mental health or condition of an individual or to the past, present, or future payment for the provision of health care to the individual; and

(c) identifies or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

(4) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession.

(5) "Patient" means an individual who receives or has received health care. The term includes a deceased individual who has received health care.

(6) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

(7) "Reasonable fee" means the charge, as provided for in [section 22], for duplicating, searching for, or handling recorded health care information.

**Section 18. Representative of deceased patient's estate.** 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 19. Disclosure of information for workers' compensation and occupational disease claims and law enforcement 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.

**Section 20. 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.

(2) [Sections 15 through 24] do 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.

**Section 21. Method of compulsory process.** (1) Unless the court for good cause shown determines that the notification should be waived or modified, if health care information is sought under [section 20(1)(b), (1)(d), or (1)(e)] or in a civil proceeding or investigation under [section 20(1)(h)], the person seeking compulsory process or discovery shall mail a notice by first-class mail to the patient or the patient's attorney of record of the compulsory process or discovery request at least 10 days before presenting the certificate required under subsection (2) of this section to the health care provider.

(2) Service of compulsory process or discovery requests upon a health care provider must be accompanied by a written certification, signed by the person seeking to obtain health care information or by the person's authorized representative, identifying at least one subsection of [section 20] under which compulsory process or discovery is being sought. The certification must also state, in the case of information sought under [section 20(1)(b), (1)(d), or (1)(e)] or in a civil proceeding under [section 20(1)(h)], that the requirements of



subsection (1) of this section for notice have been met. A person may sign the certification only if the person reasonably believes that the subsection of [section 20] identified in the certification provides an appropriate basis for the use of compulsory process or discovery. Unless otherwise ordered by the court, the health care provider shall maintain a copy of the process and the written certification as a permanent part of the patient's health care information.

(3) In response to service of compulsory process or discovery requests, when authorized by law, a health care provider may deny access to the requested health care information. If access to requested health care information is denied by the health care provider, the health care provider shall submit to the court by affidavit or other reasonable means an explanation of why the health care provider believes that the information should be protected from disclosure.

(4) When access to health care information is denied, the court may order disclosure of health care information, with or without restrictions as to its use, as the court considers necessary. In deciding whether to order disclosure, the court shall consider the explanation submitted by the health care provider and any arguments presented by interested parties.

(5) A health care provider required to disclose health care information pursuant to compulsory process may charge a reasonable fee, not to exceed the fee provided for in [section 22], and may deny examination or copying of the information until the fee is paid.

(6) Production of health care information under [section 20] and this section does not in itself constitute a waiver of any privilege, objection, or defense existing under other law or rule of evidence or procedure.

**Section 22. Reasonable fees.** Unless prohibited by federal law, a reasonable fee for providing copies of health care information may not exceed 50 cents for each page for a paper copy or photocopy. A reasonable fee may include an administrative fee that may not exceed \$15 for searching and handling recorded health care information.

**Section 23. Civil remedies.** (1) A person aggrieved by a violation of [sections 15 through 24] may maintain an action for relief as provided in this section.

(2) The court may order the health care provider or other person to comply with [sections 15 through 24] and may order any other appropriate relief.

(3) A disciplinary or punitive action may not be taken against a health care provider or the provider's employee or agent who brings evidence of a violation of [sections 15 through 24] to the attention of the patient or an appropriate authority.

(4) If the court determines that there is a violation of [sections 15 through 24], the aggrieved person is entitled to recover damages for pecuniary losses sustained as a result of the violation and, in addition, if the violation results from willful or grossly negligent conduct, the aggrieved person may recover not in excess of \$5,000, exclusive of any pecuniary loss.

(5) If a plaintiff prevails, the court may assess reasonable attorney fees and all other expenses reasonably incurred in the litigation.

(6) An action under [sections 15 through 24] is barred unless the action is commenced within 3 years after the cause of action accrues.

(7) A health care provider who relies in good faith upon certification pursuant to [section 21] is considered to have received reasonable assurances and is not liable for disclosures made in reliance on that certification.

**Section 24. Good faith.** A person authorized to act as a health care representative for an individual with respect to the individual's health care information shall act in good faith to represent the best interests of the individual.

**Section 25. Codification instruction.** (1) [Section 8] is intended to be codified as an integral part of Title 50, chapter 16, part 5, and the provisions of Title 50, chapter 16, part 5, apply to [section 8].

(2) [Sections 15 through 24] are intended to be codified as an integral part of Title 50, chapter 16, and the provisions of Title 50, chapter 16, apply to [sections 15 through 24].

**Section 26. Effective date.** [This act] is effective on passage and approval.

Approved April 18, 2003

## CHAPTER NO. 397

[HB 663]

AN ACT ENHANCING ENFORCEMENT OF THE TOBACCO PRODUCTS RESERVE FUND LAW; REQUIRING TOBACCO PRODUCT MANUFACTURERS, AS A CONDITION TO THE ABILITY TO SELL THEIR PRODUCTS IN THIS STATE, TO CERTIFY COMPLIANCE WITH SECTION 16-11-403, MCA, TO IDENTIFY THE BRAND FAMILIES OF THEIR PRODUCTS, TO REGISTER TO DO BUSINESS IN THIS STATE, AND TO APPOINT AN AGENT FOR SERVICE OF PROCESS, IF NOT DOMICILED IN THIS STATE; REQUIRING THE ATTORNEY GENERAL TO ESTABLISH AND PUBLISH ON THE ATTORNEY GENERAL'S WEBSITE A DIRECTORY OF TOBACCO PRODUCT MANUFACTURERS AND BRAND FAMILIES THAT ARE IN COMPLIANCE WITH THE TOBACCO PRODUCTS RESERVE FUND LAW; PROHIBITING WHOLESALERS FROM AFFIXING TAX INSIGNIA TO CIGARETTES OR BRAND FAMILIES MANUFACTURED BY TOBACCO PRODUCT MANUFACTURERS NOT INCLUDED IN THE ATTORNEY GENERAL'S DIRECTORY; REQUIRING WHOLESALERS TO REPORT INFORMATION REGARDING SALES OF NONPARTICIPATING MANUFACTURER CIGARETTES AND BRAND FAMILIES IN THIS STATE; ALLOWING THE ATTORNEY GENERAL TO PROVIDE BY RULE FOR THE MAKING OF ESCROW PAYMENTS IN INSTALLMENTS; ALLOWING THE ATTORNEY GENERAL TO RECOVER INVESTIGATION EXPENSES, ATTORNEY FEES, AND COSTS IN ACTIONS TO ENFORCE THE TOBACCO PRODUCTS RESERVE FUND LAW; STATUTORILY APPROPRIATING TO THE DEPARTMENT OF JUSTICE ANY EXPENSES, COSTS, OR ATTORNEY FEES AWARDED; PROVIDING PENALTIES; PROVIDING FOR JUDICIAL REVIEW OF DECISIONS BY THE ATTORNEY GENERAL REGARDING THE DIRECTORY; PROVIDING RULEMAKING AUTHORITY; CLARIFYING THE CALCULATION OF AMOUNTS THAT MAY BE WITHDRAWN FROM QUALIFYING ESCROW ACCOUNTS; AMENDING SECTIONS 16-11-403 AND 17-7-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A CONTINGENT VOIDNESS PROVISION.

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

**Section 1. Findings and purpose.** The legislature finds that violations of 16-11-401 through 16-11-403 threaten the integrity of the tobacco master settlement agreement, the fiscal soundness of the state, and the public health. The legislature finds that enacting procedural enhancements will help prevent violations of 16-11-401 through 16-11-403 and will safeguard the master settlement agreement, the fiscal soundness of the state, and the public health.

**Section 2. Definitions.** As used in [sections 1 through 12], the following definitions apply:

(1) "Brand family" means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors, including but not limited to "menthol", "lights", "kings", and "100s", and includes any use of a brand name (alone or in conjunction with any other word), trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to or identifiable with a previously known brand of cigarettes.

(2) "Cigarette" has the meaning provided in 16-11-402(4).

(3) "Department" means the department of revenue.

(4) "Master settlement agreement" has the meaning provided in 16-11-402(5).

(5) "Nonparticipating manufacturer" means any tobacco product manufacturer that is not a participating manufacturer.

(6) "Participating manufacturer" has the meaning provided in section II(jj) of the master settlement agreement defined in 16-11-402(5) and all amendments thereto.

(7) "Qualified escrow fund" has the meaning provided in 16-11-402(6).

(8) "Tobacco product manufacturer" has the meaning provided in 16-11-402(9).

(9) "Units sold" has the meaning provided in 16-11-402(10).

(10) "Wholesaler" means a person that is authorized to affix tax insignia to packages or other containers of cigarettes under 16-11-113 or any person that is required to remit the tobacco tax imposed on cigarettes pursuant to 16-11-111.

**Section 3. Certifications.** (1) Every tobacco product manufacturer whose cigarettes are sold in this state, whether directly or through a wholesaler, distributor, retailer, or similar intermediary or intermediaries, shall execute and deliver, on a form prescribed by the attorney general, a certification to the director of the department and the attorney general, no later than April 30 of each year, certifying under penalty of perjury that, as of the date of the certification, the tobacco product manufacturer either is a participating manufacturer or is in full compliance with 16-11-403.

(2) A participating manufacturer must include in its certification a list of its brand families.

(3) (a) A nonparticipating manufacturer must include in its certification a list of all of its brand families, the number of units sold in the state during the preceding calendar year for each brand family, and a list of all of its brand families that have been sold in the state at any time during the current calendar year.

(b) The certification must indicate by an asterisk any brand family sold in the state during the preceding calendar year that is no longer being sold in the state as of the date of the certification.

(c) The certification must identify by name and address any other manufacturer of the brand families in the preceding or current calendar year.

(4) A tobacco product manufacturer must update its list of brand families 30 calendar days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the attorney general and the director of the department.

(5) A nonparticipating manufacturer shall further certify:

(a) that the nonparticipating manufacturer is registered to do business in the state and has appointed an agent for service of process and has provided notice as required by [section 6];

(b) that the nonparticipating manufacturer has:

(i) established and continues to maintain a qualified escrow fund; and

(ii) executed a qualified escrow agreement that has been reviewed and approved by the attorney general and that governs the qualified escrow fund;

(c) that the nonparticipating manufacturer is in full compliance with 16-11-403 and this section and any rules adopted pursuant to 16-11-403 and this section;

(d) (i) the name, address, and telephone number of the financial institution where the nonparticipating manufacturer has established the qualified escrow fund required by 16-11-403 and all rules adopted pursuant to 16-11-403;

(ii) the account number of the qualified escrow fund and any subaccount number for the state of Montana;

(iii) the amount the nonparticipating manufacturer placed in the qualified escrow fund for cigarettes sold in the state during the preceding calendar year, the date and amount of each deposit, and any evidence or verification considered necessary by the attorney general to confirm the provisions of this subsection (5)(d)(iii); and

(iv) the amounts and dates of any withdrawal or transfer of funds that the nonparticipating manufacturer made at any time from the qualified escrow fund or from any other qualified escrow fund into which the nonparticipating manufacturer ever made escrow payments pursuant to 16-11-403 and all rules adopted pursuant to 16-11-403.

(6) A tobacco product manufacturer may not include a brand family in its certification unless:

(a) in the case of a participating manufacturer, the participating manufacturer affirms that the brand family is to be considered its cigarettes for purposes of calculating its payments under the master settlement agreement for the relevant year, in the volume and shares determined pursuant to the master settlement agreement; and

(b) in the case of a nonparticipating manufacturer, the nonparticipating manufacturer affirms that the brand family is to be considered to be its cigarettes for purposes of 16-11-403.

(7) [Sections 1 through 12] may not be construed to limit or otherwise affect the state's right to maintain that a brand family constitutes cigarettes of a

different tobacco product manufacturer for purposes of calculating payment under the master settlement agreement or for purposes of 16-11-401 through 16-11-403.

(8) A tobacco product manufacturer shall maintain all invoices and documentation of sales and other similar information relied upon for its certifications for a period of 5 years unless otherwise required by law to maintain them for a longer period of time.

**Section 4. Directory of cigarettes approved for stamping and sale.**

(1) Not later than [90 days after the effective date of this section], the attorney general shall develop and publish on the attorney general's website a directory listing all tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of [section 3] and all brand families that are listed in the certifications, except as otherwise provided in this section.

(2) The attorney general may not include or retain in the directory the name or brand families of any nonparticipating manufacturer that has failed to provide the required certification or whose certification the attorney general determines is not in compliance with [section 3], unless the attorney general has determined that the violation has been cured to the satisfaction of the attorney general.

(3) Neither a tobacco product manufacturer nor a brand family may be included or retained in the directory if the attorney general concludes, in the case of a nonparticipating manufacturer that:

(a) an escrow payment required pursuant to 16-11-403 for any period for any brand family, whether or not listed by the nonparticipating manufacturer, has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the attorney general; or

(b) an outstanding final judgment, including interest on the judgment, for a violation of 16-11-403 has not been fully satisfied for the brand family or the manufacturer.

(4) The attorney general shall update the directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand family to keep the directory in conformity with the requirements of [sections 1 through 12]. The attorney general shall post in the directory and transmit by electronic mail and certified mail, return receipt requested, to each wholesaler notice of the intended removal from the directory of a tobacco product manufacturer or brand family no less than 30 days prior to the removal. During that period, cigarettes of the tobacco product manufacturer or brand family subject to the notice are contraband under 16-11-147 and the affixing of tax insignia to or the sale or possession for sale of the cigarettes is unlawful as provided in [section 5], except that, notwithstanding the provisions of 16-11-147 and [section 5]:

(a) a wholesaler may affix tax insignia to, possess for sale, or sell at wholesale cigarettes of any tobacco product manufacturer or brand family subject to notice of removal under this subsection (4) if the cigarettes were shipped to the wholesaler on or before the date of issuance of the notice and if the total number of the cigarettes sold by the wholesaler following issuance of the notice of removal and prior to reinstatement of the tobacco product manufacturer or brand family in the directory does not exceed a number that is the average of the number of cigarettes of the tobacco product manufacturer or

brand family sold by the wholesaler during each of the 3 months preceding the issuance of the notice; and

(b) a licensed seller at retail may possess and sell cigarettes of a tobacco product manufacturer or brand family that the attorney general has removed from the directory or that is subject to notice of removal if the cigarettes were lawfully shipped to the retailer before the issuance of the notice of removal or after the issuance of notice of removal but before the attorney general removes the tobacco product manufacturer or brand family from the directory. A contract with a tobacco product manufacturer that has been removed from the directory that purports to require, contemplate, or provide for delivery of cigarettes or tobacco products in any applicable brand family after the date of removal from the directory is not valid or enforceable.

(5) Every wholesaler must provide and update as necessary an electronic mail address to the attorney general for the purpose of receiving any notifications required by [sections 1 through 12].

**Section 5. Prohibition against stamping or sale of cigarettes not in directory.** It is unlawful for any person to:

(1) affix a tax insignia to a package or other container of cigarettes of a tobacco product manufacturer or brand family not included in the directory; or

(2) sell, offer for sale, or possess for sale in this state cigarettes of a tobacco product manufacturer or brand family not included in the directory.

**Section 6. Agent for service of process.** (1) Any nonresident or foreign nonparticipating manufacturer that has not registered to do business in the state as a foreign corporation or business entity must, as a condition precedent to having its brand families included or retained in the directory, appoint and continually engage without interruption the services of an agent in this state to act as agent for the service of process on whom all process, and any action or proceeding against it concerning or arising out of the enforcement of [sections 1 through 12] and 16-11-403, may be served in any manner authorized by law. The service constitutes legal and valid service of process on the nonparticipating manufacturer. The nonparticipating manufacturer must provide the name, address, phone number, and proof of the appointment and availability of the agent to the satisfaction of the attorney general.

(2) The nonparticipating manufacturer must provide notice to the attorney general at least 30 calendar days prior to termination of the authority of an agent and must further provide proof to the satisfaction of the attorney general of the appointment of a new agent no less than 5 calendar days prior to the termination of an existing agent appointment. If an agent terminates an agency appointment, the nonparticipating manufacturer must notify the attorney general of the termination within 5 calendar days and include proof to the satisfaction of the attorney general of the appointment of a new agent.

**Section 7. Reporting of information.** (1) Not later than 20 calendar days after the end of each calendar quarter and more frequently if directed by the attorney general, each wholesaler shall submit information that the attorney general requires to facilitate compliance with this section by nonparticipating manufacturers, including but not limited to a list by brand family of the total number of nonparticipating manufacturer cigarettes or, in the case of nonparticipating manufacturer roll-your-own tobacco, the equivalent amount of tobacco, calculated as provided in 16-11-402(4), on which the wholesaler precollected tax as provided in 16-11-113 or 16-11-203 and that the wholesaler

sold during the period covered by the report. The wholesaler shall maintain and make available to the attorney general all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the attorney general for a period of 5 years.

(2) The department is authorized to disclose to the attorney general any information received by it and requested by the attorney general for purposes of determining compliance with and enforcing the provisions of [sections 1 through 12]. The department and attorney general shall share the information received under [sections 1 through 12] with each other and may share the information with other federal, state, or local agencies only for the purposes of enforcement of [sections 1 through 12], 16-11-403, or the corresponding laws of other states.

(3) The attorney general may require at any time from the nonparticipating manufacturer proof from the financial institution in which the manufacturer has established a qualified escrow fund for the purpose of compliance with 16-11-403 of:

- (a) the amount of money in the fund, exclusive of interest;
- (b) the amount and dates of each deposit to the fund; and
- (c) the amount and dates of each withdrawal from the fund.

(4) In addition to the information required to be submitted pursuant to subsections (1) through (3), the attorney general may require a wholesaler or tobacco product manufacturer to submit any additional information, including but not limited to samples of the packaging or labeling of each brand family, to enable the attorney general to determine whether a tobacco product manufacturer or wholesaler is in compliance with [sections 1 through 12].

**Section 8. Escrow installments.** To promote compliance with the provisions of [sections 1 through 12], the attorney general may adopt rules requiring a tobacco product manufacturer to make the escrow deposits required in 16-11-403 in installments during the year in which the sales covered by the deposits are made. The attorney general may require production of information sufficient to enable the attorney general to determine the adequacy of the amount of the installment deposit.

**Section 9. Penalties and other remedies.** (1) In addition to any other civil or criminal remedy provided by law, upon a determination that a wholesaler has violated [section 5] or any rule adopted pursuant to that section, the license of the wholesaler may be revoked or suspended in the manner provided by 16-11-144, in a proceeding brought by the department or by the attorney general. For each violation of [section 5], a civil penalty in the amount of \$250 for the first full or partial pack and \$10 for each additional full or partial pack to which a tax insignia is affixed or that is sold, offered for sale, or possessed for sale in violation of [section 5] may be imposed. Each tax insignia affixed and each offer to sell cigarettes in violation of [section 5] constitutes a separate violation. The penalty may be imposed in the manner provided by 16-11-143(2) in a proceeding brought by the department or the attorney general.

(2) Any cigarettes that have been sold, offered for sale, or possessed for sale in this state in violation of [section 5] may be considered contraband under 16-11-147. The cigarettes are subject to seizure and forfeiture as provided in 16-11-147, and all cigarettes seized and forfeited must be destroyed and not resold.

(3) The attorney general may seek an injunction to restrain a threatened or actual violation of [section 5 or 7(1) or (4)] by a wholesaler and to compel the wholesaler to comply with those sections.

(4) In any action brought pursuant to [sections 1 through 12], the prevailing party is entitled to recover the costs of the action and reasonable attorney fees calculated as provided in [section 13]. If the state is the prevailing party, its recoverable costs must include the state's costs of investigation of the violation.

(5) (a) It is unlawful for a person to:

(i) sell or distribute cigarettes; or

(ii) acquire, hold, own, possess, transport, import, or cause to be imported cigarettes that the person knows or should know are intended for distribution or sale in the state in violation of [section 5].

(b) A violation of this section is a misdemeanor punishable as provided in 16-11-148.

(6) If a court determines that a person has violated [sections 1 through 12], the court shall order any profits, gain, gross receipts, or other benefit from the violation to be paid to the state treasurer for deposit in the trust fund created by Article XII, section 4, of the Montana constitution.

(7) Unless otherwise expressly provided, the remedies or penalties provided by [sections 1 through 12] are cumulative to each other and to the remedies or penalties available under all other laws of this state.

**Section 10. Contested case and judicial review of attorney general determinations.** A determination of the attorney general not to include or to remove from the directory a brand family or tobacco product manufacturer is subject to review by the attorney general or an employee of the department of justice designated by the attorney general to issue final decisions under [sections 1 through 12] in the manner prescribed by Title 2, chapter 4, part 6. The decision of the attorney general or designated employee constitutes the final agency decision, and judicial review may be sought from the final decision as provided in Title 2, chapter 4, part 7.

**Section 11. Rules.** The attorney general may adopt rules necessary to implement [sections 1 through 12].

**Section 12. Construction.** If a court of competent jurisdiction finds that the provisions of [sections 1 through 12] and of 16-11-401 through 16-11-403 conflict and cannot be harmonized, then the legislature intends the provisions of 16-11-401 through 16-11-403 to control. Except as specifically provided in [sections 1 through 12], the provisions of [sections 1 through 12] are not intended to and may not be interpreted to override the provisions of 16-11-401 through 16-11-403.

**Section 13. Attorney fees and costs.** (1) In an action under 16-11-403(2)(c), the court, upon a finding that a tobacco product manufacturer has failed to comply with its obligations under 16-11-403(1) or (2)(a), must award the attorney general the expenses incurred in investigating the claim, the costs of suit, and reasonable attorney fees. In cases in which outside counsel represents the attorney general, the attorney fees awarded must equal the outside counsel charges reasonably incurred by the attorney general for attorney fees and expenses in prosecuting the action. In all other cases, the attorney fees must be calculated by reference to the hourly rate charged by the agency legal services bureau for the provision of legal services to state agencies,



multiplied by the number of attorney hours devoted to the prosecution of the action, plus the actual cost of any expenses reasonably incurred in the prosecution of the action.

(2) Investigation expenses, attorney fees, and costs recovered under this section are allocated to the department of justice for deposit in the attorney general's major litigation account and may be used by the attorney general for any purpose for which funds appropriated to that account may be used. The funds are statutorily appropriated as provided in 17-7-502.

**Section 14.** Section 16-11-403, MCA, is amended to read:

**"16-11-403. Requirements.** Any tobacco product manufacturer selling cigarettes to consumers within the State (whether directly or through a distributor, retailer or similar intermediary or intermediaries) after the date of enactment of this Act shall do one of the following:

(1) become a participating manufacturer (as that term is defined in section II(jj) of the Master Settlement Agreement) and generally perform its financial obligations under the Master Settlement Agreement; or

(2) (a) place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation) —

1999: \$.0094241 per unit sold after the date of enactment of this Act;

2000: \$.0104712 per unit sold;

for each of 2001 and 2002: \$.0136125 per unit sold;

for each of 2003 through 2006: \$.0167539 per unit sold;

for each of 2007 and each year thereafter: \$.0188482 per unit sold.

(b) A tobacco product manufacturer that places funds into escrow pursuant to paragraph (a) shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances-

(i) to pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the State or any releasing party located or residing in the State. Funds shall be released from escrow under this subparagraph (A) in the order in which they were placed into escrow and (B) only to the extent and at the time necessary to make payments required under such judgment or settlement;

(ii) to the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow *on account of units sold in the state* in a particular year was greater than the ~~State's allocable share of the total payments that such manufacturer would have been required to make in that year under the Master Settlement Agreement (as determined pursuant to section IX(i)(2) of the Master Settlement Agreement, and before any of the adjustments or offsets described in section IX(i)(3) of that Agreement other than the Inflation Adjustment)~~ *Master Settlement Agreement payments, as determined pursuant to section IX(i) of that Agreement, including a final determination of all adjustments, that the manufacturer would have been required to make on account of those units had it been a participating manufacturer* ~~Participating Manufacturer~~, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

(iii) to the extent not released from escrow under subparagraphs (i) or (ii), funds shall be released from escrow and revert back to such tobacco product manufacturer twenty-five years after the date on which they were placed into escrow.

(c) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this subsection shall annually certify to the Attorney General that it is in compliance with this subsection. The Attorney General may bring a civil action on behalf of the State against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall-

(i) be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation of this subsection, may impose a civil penalty to be paid to the general fund of the state in an amount not to exceed 5 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100 percent of the original amount improperly withheld from escrow;

(ii) in the case of a knowing violation, be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation of this subsection, may impose a civil penalty to be paid to the general fund of the state in an amount not to exceed 15 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300 percent of the original amount improperly withheld from escrow; and

(iii) in the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the State (whether directly or through a distributor, retailer or similar intermediary) for a period not to exceed 2 years. Each failure to make an annual deposit required under this section shall constitute a separate violation.”

**Section 15.** 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: 2-15-151; 2-17-105; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-324; 15-37-117; 15-38-202; 15-65-121; 15-70-101; [section 13]; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-6-703; 53-24-206; 75-1-1101; 75-5-1108;

75-6-214; 75-11-313; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; 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 Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, the inclusion of 15-35-108 and 90-6-710 terminates June 30, 2005; pursuant to sec. 17, Ch. 414, L. 2001, the inclusion of 2-15-151 terminates December 31, 2006; and pursuant to sec. 2, Ch. 594, L. 2001, the inclusion of 17-3-241 becomes effective July 1, 2003.)"

**Section 16. Contingent voidness.** If any provision of [this act] causes 16-11-401 through 16-11-403 to no longer constitute a qualifying statute, as defined in section IX(d)(2)(E) of the master settlement agreement, then that provision of [this act] is void.

**Section 17. Severability.** (1) Except as provided in subsection (2), 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.

(2) If any part of the amendment to 16-11-403(2)(b)(ii) made by [section 14] is invalid, then 16-11-403(2)(b)(ii) is void in its entirety. If the voiding of 16-11-403(2)(b)(ii) is thereafter declared invalid, then [section 14] is void and 16-11-403(2)(b)(ii) is restored as it read on the day prior to [the effective date of this act]. If 16-11-403(2)(b)(ii) is voided under this section or is declared invalid, all other portions of 16-11-403 remain in effect in all valid applications that are severable from the voided or invalid applications.

**Section 18. Transition.** For the year 2003, if [the effective date of this act] is later than March 16, 2003, the first report of wholesalers required by [section 7] is due 30 calendar days after the publication of the directory described in [section 4], the certifications by a tobacco product manufacturer described in [section 3] are due 45 calendar days after [the effective date of this act], and the directory described in [section 4] must be published or made available within 90 calendar days after [the effective date of this act].

**Section 19. Codification instruction.** (1) [Sections 1 through 12] are intended to be codified as an integral part of Title 16, chapter 11, and the provisions of Title 16, chapter 11, apply to [sections 1 through 12].

(2) [Section 13] is intended to be codified as an integral part of Title 16, chapter 11, part 4, and the provisions of Title 16, chapter 11, part 4, apply to [section 13].

**Section 20. Effective date.** [This act] is effective on passage and approval.

**Section 21. Retroactive applicability.** The legislature intends that [sections 13 and 15] apply to all pending actions in which a final judgment has not been entered prior to [the effective date of this act].

Approved April 17, 2003

## CHAPTER NO. 398

[HB 703]

AN ACT REVISING LAWS GOVERNING CHILD ABUSE AND NEGLECT; AMENDING THE DEFINITION OF "PSYCHOLOGICAL ABUSE OR NEGLECT"; PROVIDING PROTECTIONS FOR VICTIMS OF PARTNER AND FAMILY MEMBER ASSAULT REGARDING CHILD REMOVAL AND EMERGENCY PROTECTIVE SERVICES; AMENDING SECTIONS 41-3-102 AND 41-3-301, MCA; AND PROVIDING EFFECTIVE DATES.

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

**Section 1.** Section 41-3-102, MCA, is amended to read:

**"41-3-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "Abandon", "abandoned", and "abandonment" mean:

(a) leaving a child under circumstances that make reasonable the belief that the parent does not intend to resume care of the child in the future;

(b) willfully surrendering physical custody for a period of 6 months and during that period not manifesting to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child;

(c) that the parent is unknown and has been unknown for a period of 90 days and that reasonable efforts to identify and locate the parent have failed; or

(d) the voluntary surrender, as defined in 40-6-402, by a parent of a newborn who is no more than 30 days old to an emergency services provider, as defined in 40-6-402.

(2) "A person responsible for a child's welfare" means:

(a) the child's parent, guardian, foster parent or an adult who resides in the same home in which the child resides;

(b) a person providing care in a day-care facility;

(c) an employee of a public or private residential institution, facility, home, or agency; or

(d) any other person responsible for the child's welfare in a residential setting.

(3) "Abused or neglected" means the state or condition of a child who has suffered child abuse or neglect.

(4) (a) "Adequate health care" means any medical care or nonmedical remedial health care recognized by an insurer licensed to provide disability insurance under Title 33, including the prevention of the withholding of medically indicated treatment or medically indicated psychological care permitted or authorized under state law.

(b) This chapter may not be construed to require or justify a finding of child abuse or neglect for the sole reason that a parent or legal guardian, due to religious beliefs, does not provide adequate health care for a child. However, this chapter may not be construed to limit the administrative or judicial authority of the state to ensure that medical care is provided to the child when there is imminent substantial risk of serious harm to the child.

(5) "Best interests of the child" means the physical, mental, and psychological conditions and needs of the child and any other factor considered by the court to be relevant to the child.

(6) "Child" or "youth" means any person under 18 years of age.

(7) (a) "Child abuse or neglect" means:

- (i) actual harm to a child's health or welfare;
- (ii) substantial risk of harm to a child's health or welfare; or
- (iii) abandonment.

(b) The term includes actual harm or substantial risk of harm by the acts or omissions of a person responsible for the child's welfare.

(c) The term does not include self-defense, defense of others, or action taken to prevent the child from self-harm that does not constitute harm to a child's health or welfare.

(8) "Concurrent planning" means to work toward reunification of the child with the family while at the same time developing and implementing an alternative permanent plan.

(9) "Department" means the department of public health and human services provided for in 2-15-2201.

(10) "Family group conference" means a meeting that involves family members in either developing treatment plans or making placement decisions, or both.

(11) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

(a) inflicts or allows to be inflicted upon the child physical abuse, physical neglect, or psychological abuse or neglect;

(b) commits or allows to be committed sexual abuse or exploitation of the child;

(c) induces or attempts to induce a child into giving untrue testimony that the child or another child was abused or neglected by a parent or person responsible for the child's welfare;

(d) causes malnutrition or failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered financial or other reasonable means to do so;

(e) exposes or allows the child to be exposed to an unreasonable risk to the child's health or welfare by failing to intervene or eliminate the risk; or

(f) abandons the child.

(12) "Limited emancipation" means a status conferred on a youth by a court in accordance with 41-3-438 under which the youth is entitled to exercise some

but not all of the rights and responsibilities of a person who is 18 years of age or older.

(13) "Parent" means a biological or adoptive parent or stepparent.

(14) "Parent-child legal relationship" means the legal relationship that exists between a child and the child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been terminated by competent judicial decree as provided in 40-6-234, Title 42, or part 6 of this chapter.

(15) "Permanent placement" means reunification of the child with the child's parent, adoption, placement with a legal guardian, placement with a fit and willing relative, or placement in another planned permanent living arrangement until the child reaches 18 years of age.

(16) "Physical abuse" means an intentional act, an intentional omission, or gross negligence resulting in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns, bone fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or function, or death.

(17) "Physical neglect" means either failure to provide basic necessities, including but not limited to appropriate and adequate nutrition, protective shelter from the elements, and appropriate clothing related to weather conditions, or failure to provide cleanliness and general supervision, or both.

(18) (a) "Psychological abuse or neglect" means severe maltreatment through acts or omissions that are injurious to the child's emotional, intellectual, or psychological capacity to function, including *the commission of* acts of violence against another person residing in the child's home.

(b) *The term may not be construed to hold a victim responsible for failing to prevent the crime against the victim.*

(19) "Reasonable cause to suspect" means cause that would lead a reasonable person to believe that child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known to the person.

(20) "Residential setting" means an out-of-home placement where the child typically resides for longer than 30 days for the purpose of receiving food, shelter, security, guidance, and, if necessary, treatment.

(21) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, sexual abuse, ritual abuse, or incest, as described in Title 45, chapter 5.

(b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area while attending to the sanitary or health care needs of that infant or toddler by a parent or other person responsible for the child's welfare.

(22) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625.

(23) "Social worker" means an employee of the department who, before the employee's field assignment, has been educated or trained in a program of social work or a related field that includes cognitive and family systems treatment or who has equivalent verified experience or verified training in the investigation

of child abuse, neglect, and endangerment. This definition does not apply to any provision of this code that is not in this chapter.

(24) "Treatment plan" means a written agreement between the department and the parent or guardian or a court order that includes action that must be taken to resolve the condition or conduct of the parent or guardian that resulted in the need for protective services for the child. The treatment plan may involve court services, the department, and other parties, if necessary, for protective services.

(25) "Unfounded" means that after an investigation, the investigating person has determined that the reported abuse, neglect, or exploitation has not occurred.

(26) (a) "Withholding of medically indicated treatment" means the failure to respond to an infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication, that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting the conditions.

(b) The term does not include the failure to provide treatment, other than appropriate nutrition, hydration, or medication, to an infant when, in the treating physician's or physicians' reasonable medical judgment:

(i) the infant is chronically and irreversibly comatose;

(ii) the provision of treatment would:

(A) merely prolong dying;

(B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

(C) otherwise be futile in terms of the survival of the infant; or

(iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane. For purposes of this subsection (26), "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children 1 year of age or older.

(27) "Youth in need of care" means a youth who has been adjudicated or determined, after a hearing, to be or to have been abused, neglected, or abandoned."

**Section 2.** Section 41-3-301, MCA, is amended to read:

**"41-3-301. Emergency protective service.** (1) Any child protective social worker of the department, a peace officer, or the county attorney who has reason to believe any youth is in immediate or apparent danger of harm may immediately remove the youth and place the youth in a protective facility. The department may make a request for further assistance from the law enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the parents, parent, guardian, or other person having legal custody of the youth at the time the placement is made or as soon after placement as possible. Notification under this subsection must include the reason for removal, information regarding the show cause hearing, and the purpose of the show cause hearing.

(2) *If a social worker of the department, a peace officer, or the county attorney determines in an investigation of abuse or neglect of a child that the child is in danger because of the occurrence of partner or family member assault, as provided for in 45-5-206, against an adult member of the household or that the child needs protection as a result of the occurrence of partner or family member assault against an adult member of the household, the department shall take appropriate steps for the protection of the child, which may include:*

(a) *making reasonable efforts to protect the child and prevent the removal of the child from the parent or guardian who is a victim of alleged partner or family member assault;*

(b) *making reasonable efforts to remove the person who allegedly committed the partner or family member assault from the child's residence if it is determined that the child or another family or household member is in danger of partner or family member assault; and*

(c) *providing services to help protect the child from being placed with or having unsupervised visitation with the person alleged to have committed partner or family member assault until the department determines that the alleged offender has met conditions considered necessary to protect the safety of the child.*

(3) *If the department determines that an adult member of the household is the victim of partner or family member assault, the department shall provide the adult victim with a referral to a domestic violence program.*

~~(2)~~(4) *A child who has been removed from the child's home or any other place for the child's protection or care may not be placed in a jail.*

~~(3)~~(5) *An abuse and neglect petition must be filed within 2 working days, excluding weekends and holidays, of emergency placement of a child unless arrangements acceptable to the agency for the care of the child have been made by the parents. A show cause hearing must be held within 10 days, excluding weekends and holidays, of the filing of the initial petition unless otherwise stipulated by the parties pursuant to 41-3-434.*

~~(4)~~(6) *The department shall make the necessary arrangements for the child's well-being as are required prior to the court hearing."*

**Section 3. Effective dates.** (1) [Section 1 and this section] are effective on passage and approval.

(2) [Section 2] is effective October 1, 2003.

Approved April 18, 2003

## CHAPTER NO. 399

[SB 65]

AN ACT GENERALLY REVISING VETERANS' BENEFIT LAWS; REVISING THE PROPERTY TAX EXEMPTION, VEHICLE REGISTRATION FEE, AND SPECIAL LICENSE PLATES PROVISIONS FOR ELIGIBLE VETERANS AND THEIR SURVIVING SPOUSES; REVISING INCOME THRESHOLDS FOR THE VETERAN PROPERTY TAX EXEMPTION; AMENDING LANGUAGE RELATED TO DISABLED VETERANS ENTITLED TO RECEIVE COMPENSATION FROM THE U.S. DEPARTMENT OF VETERANS AFFAIRS AT THE 100 PERCENT DISABILITY RATE; CLARIFYING AND SIMPLIFYING PROVISIONS ON THE VEHICLE



REGISTRATION FEE WAIVERS AND SPECIAL LICENSE PLATE PROVISIONS AVAILABLE TO ELIGIBLE VETERANS AND THEIR SURVIVING SPOUSES; EXTENDING VEHICLE REGISTRATION FEE WAIVERS TO THE SPOUSES OF VETERANS WHO WERE KILLED WHILE ON ACTIVE DUTY OR WHO DIED AS A RESULT OF A SERVICE-CONNECTED DISABILITY; CLARIFYING SPECIAL PARKING PRIVILEGES ASSOCIATED WITH DISABLED VETERANS; AMENDING SECTIONS 15-1-121, 15-1-122, 15-6-211, 49-4-301, 49-4-302, 49-4-304, 61-3-313, 61-3-321, 61-3-332, 61-3-407, 61-3-426, 61-3-455, AND 61-3-560, MCA; REPEALING SECTIONS 61-3-452, 61-3-453, 61-3-454, AND 61-3-457, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

WHEREAS, the State Administration and Veterans' Affairs Interim Committee (SAIC) closely examined property tax, vehicle registration, and special license plate benefits available to veterans or their surviving spouses; and

WHEREAS, the SAIC finds that state statutory language providing disabled veterans with certain benefits based on a 100% disability rating from the U.S. Department of Veterans Affairs needs to be updated to account for veterans with less than a 100% disability rating but entitled to receive compensation at the 100% disability rate; and

WHEREAS, veterans and surviving spouses have requested closer parity between the vehicle registration and special license plate benefits available to various classes of veterans and inclusion of the surviving spouses of veterans killed while on active duty or who died as a result of a service-connected disability; and

WHEREAS, statutory provisions related to vehicle registration and special license plate fees should be simplified to the extent possible to streamline administration and address various other disparities.

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

**Section 1. Special plates for military personnel, veterans, and spouses.** (1) (a) Active military personnel, veterans, or the surviving spouse of an eligible veteran, if the spouse has not remarried, may be issued special military or veteran license plates as provided in this section.

(b) Subject to the provisions of 61-3-332 and except as otherwise provided in this chapter, special license plates issued pursuant to this section must be numbered in sets of two with a different number on each set and must be properly displayed as provided in 61-3-301.

(2) (a) Upon application, after paying all applicable vehicle registration fees and special license plate fees and providing an official certificate from the applicant's unit commander verifying the individual's eligibility and authorizing the department to issue the plates to the individual, eligible military personnel may be issued one set of special military license plates as provided in this subsection (2).

(b) A member of the Montana national guard who is a state resident may be issued special license plates with a design or decal displaying the letters "NG". However, the member shall surrender the plates to the department when the member becomes ineligible.

(c) A member of the reserve armed forces of the United States who is a state resident may be issued special license plates according to the member's branch of service verified in the application with a design or decal displaying one of the

following: United States army reserve, AR (symbol); United States naval reserve, NR (anchor); United States air force reserve, AFR (symbol); or United States marine corps reserve, MCR (globe and anchor). However, the member shall surrender the plates to the department when the member becomes ineligible.

(d) An active member of the regular armed forces of the United States who is a state resident may be issued special license plates inscribed with a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the member's branch of service verified in the application. However, the member shall surrender the plates to the department upon becoming ineligible.

(3) (a) Upon application, after presenting proper identification and a department of defense form 214 (DD-214) or its successor or documents showing an other-than-dishonorable discharge or a reenlistment verifying the applicant's eligibility and paying the veterans' cemetery fee specified in [section 2] and all applicable vehicle registration fees under this chapter, subject to the provisions of [section 3], an eligible veteran must be issued any set and more than one set of the special license plates provided for in this subsection (3) that the member requests and is eligible to receive.

(b) A veteran may be issued special license plates displaying the letters "DV", which entitles the veteran to the parking privileges allowed to a person with a special parking permit issued under Title 49, chapter 4, part 3, if the veteran:

(i) has been awarded the purple heart and has been rated by the U.S. department of veterans affairs as 50% or more disabled because of a service-connected injury; or

(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.

(c) A veteran who has been awarded the purple heart may be issued special license plates with the purple heart decal displaying the words "combat wounded".

(d) A veteran who was captured and held prisoner by the military force of a foreign nation may be issued special license plates with a design or decal displaying the words "ex-prisoner of war" or an abbreviation that the department considers appropriate.

(e) If the veteran was a member of the United States armed forces on December 7, 1941, and during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) was on station at Pearl Harbor on the island of Oahu or was offshore from Pearl Harbor at a distance of not more than 3 miles, the veteran may be issued special license plates designed to show that the veteran is a survivor of the Pearl Harbor attack.

(f) A person who is a member of the legion of valor may be issued special plates displaying a design or decal depicting the recognized legion of valor medallion.

(g) A veteran may be issued special license plates displaying the word "VETERAN" and a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the veteran's service record verified in the application.

(h) A member or former members of the Montana national guard eligible to receive a military retirement may be issued special license plates displaying the Montana national guard insignia and the words "National Guard veteran".

(4) Upon request, after paying the veterans' cemetery fee provided in [section 2] and all applicable vehicle registration fees under this chapter, subject to the provisions of [section 3], the surviving spouse of an eligible veteran, if the spouse has not remarried, may retain the special license plates issued to the deceased veteran, except the special "DV" plates provided for under subsection (3)(b).

(5) For purposes of this section, "veteran" has the meaning provided in 10-2-101.

**Section 2. Veterans' cemetery fee for special veteran license plates — disposition.** (1) Except as provided in [section 3], an applicant for special veteran license plates provided for under [section 1(3)] must pay \$10 for each set issued, renewed, or transferred, in addition to any other taxes or fees applicable under this chapter.

(2) Fees collected under this section must be deposited in the state general fund and transferred as provided in 15-1-122 to the special revenue account for state veterans' cemeteries established in 10-2-603.

**Section 3. Vehicle registration fee and veterans' cemetery fee waivers.** (1) Except as otherwise provided in this section, a person eligible under subsection (2) is exempt from the veterans' cemetery fee provided in [section 2] for one set of special veteran license plates and all vehicle registration fees imposed by this chapter for one vehicle that is not used for commercial purposes.

(2) The following persons are eligible for the waiver provided in subsection (1):

(a) a veteran who was a prisoner of war who presents official documentation from the U.S. department of defense verifying the veteran's status, or the veteran's surviving spouse, if the spouse has not remarried;

(b) a veteran who 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, or the veteran's surviving spouse, if the spouse has not remarried;

(c) a veteran determined by the U.S. department of veterans affairs to be 50% or more disabled because of a service-connected injury and who has been awarded the purple heart, as verified by official documentation from the U.S. department of veterans affairs and the veteran's military service record issued by the U.S. department of defense, or the veteran's surviving spouse, if the spouse has not remarried, except that the veteran or the surviving spouse must pay the veterans' cemetery fee as provided for in [section 2];

(d) the surviving spouse, if the spouse has not remarried, of a military service member killed while on active duty as verified in official documentation issued by the U.S. department of defense; and

(e) the surviving spouse, if the spouse has not remarried, of a military service member or veteran who died of a service-connected injury or disability as determined by and verified in official documentation from the U.S. department of veterans affairs.

**Section 4.** Section 15-1-121, MCA, is amended to read:

**“15-1-121. Entitlement share payment — appropriation.** (1) The amount calculated pursuant to this subsection is each local government's base entitlement share. The department shall estimate the total amount of revenue that each local government received from the following sources for the fiscal year ending June 30, 2001:

(a) personal property tax reimbursements pursuant to sections 167(1) through (5) and 169(6), Chapter 584, Laws of 1999;

(b) vehicle and boat 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) 25-1-1103;

(iv) 25-9-506;

(v) 25-9-804; and

(vi) 27-9-103;

(e) certificate of ownership fees for manufactured homes pursuant to 15-1-116;

(f) financial institution taxes pursuant to Title 15, chapter 31, part 7;

(g) coal severance taxes allocated for county land planning pursuant to 15-35-108;

(h) all beer, liquor, and wine taxes pursuant to:

(i) 16-1-404;

(ii) 16-1-406; and

(iii) 16-1-411;

(i) late filing fees pursuant to 61-3-201;

(j) title and registration fees pursuant to 61-3-203;

(k) ~~disabled veterans' flat license plate fees and purple heart cemetery license plate fees pursuant to 61-3-332 [section 2];~~

(l) county personalized license plate fees pursuant to 61-3-406;

- (m) special mobile equipment fees pursuant to 61-3-431;
- (n) single movement permit fees pursuant to 61-4-310;
- (o) state aeronautics fees pursuant to 67-3-101; and
- (p) department of natural resources and conservation payments in lieu of taxes pursuant to Title 77, chapter 1, part 5.

(2) (a) From the amounts estimated in subsection (1) for each county government, the department shall deduct fiscal year 2001 county government expenditures for district courts, less reimbursements for district court expenses, and fiscal year 2001 county government expenditures for public welfare programs to be assumed by the state in fiscal year 2002.

(b) The amount estimated pursuant to subsections (1) and (2)(a) is each local government's base year component. The sum of all local governments' base year components is the base year entitlement share pool. For the purpose of calculating the sum of all local governments' base year components, the base year component for a local government may not be less than zero.

(3) (a) Beginning with fiscal year 2002 and in each succeeding fiscal year, the base year entitlement share pool must be increased annually by a growth rate as provided for in this subsection (3). The amount determined through the application of annual growth rates is the entitlement share pool for each fiscal year. For fiscal year 2002, the growth rate is 3%. For fiscal year 2003, the growth rate is 3% for incorporated cities and towns, 1.61% for counties, and 2.3% for consolidated local governments. Beginning with calendar year 2004, by October 1 of each even-numbered year, the department shall calculate the growth rate of the entitlement share pool for each year of the next biennium in the following manner:

(i) Before applying the growth rate for fiscal year 2004 to determine the fiscal year 2004 entitlement share pool, the department shall add to the fiscal year 2003 entitlement share pool the fiscal year 2003 amount of revenue actually distributed to the county from the 25-cent marriage license fee in 50-15-301 and the probation and parole fee in 46-23-1031(2)(b).

(ii) The department shall calculate the average annual growth rate of the Montana gross state product, as published by the bureau of economic analysis of the United States department of commerce, for the following periods:

(A) the last 4 calendar years for which the information has been published; and

(B) the 4 calendar years beginning with the year before the first year in the period referred to in subsection (3)(a)(ii)(A).

(iii) The department shall calculate the average annual growth rate of Montana personal income, as published by the bureau of economic analysis of the United States department of commerce, for the following periods:

(A) the last 4 calendar years for which the information has been published; and

(B) the 4 calendar years beginning with the year before the first year in the period referred to in subsection (3)(a)(iii)(A).

(b) (i) For fiscal year 2004 and subsequent fiscal years, the entitlement share pool growth rate for the first year of the biennium must be the following percentage of the average of the growth rates calculated in subsections (3)(a)(ii)(B) and (3)(a)(iii)(B):

(A) for counties, 54%;

- (B) for consolidated local governments, 62%; and
- (C) for incorporated cities and towns, 70%.

(ii) The entitlement share pool growth rate for the second year of the biennium must be the following percentage of the average of the growth rates calculated in subsections (3)(a)(ii)(A) and (3)(a)(iii)(A):

- (A) for counties, 54%;
- (B) for consolidated local governments, 62%; and
- (C) for incorporated cities and towns, 70%.

(4) 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 (6). For purposes of calculating the base year component for a county or consolidated local government, the department shall include the revenue listed in subsection (1) for all special districts within the county or consolidated local government. 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 listed in subsection (1).

(5) (a) The entitlement share pools calculated in this section and the block grants provided for in subsection (6) are statutorily appropriated, as provided in 17-7-502, from the general fund to the department for distribution to local governments. Each local government is entitled to a pro rata share of each year's entitlement share pool based on the local government's base component in relation to the base year entitlement share pool. The distributions must be made on a quarterly basis beginning September 15, 2001.

(b) (i) For fiscal year 2002, the growth amount is the difference between the fiscal year 2002 entitlement share pool and the base year entitlement share pool. For fiscal year 2002, a county may have a negative base year component. For fiscal year 2003 and each succeeding fiscal year, 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. For the purposes of subsection (5)(b)(ii)(A), a county with a negative base year component has a base year component of zero. 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 base 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 base 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 base 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 not represented by the growth amount is distributed to each local government in the same manner as the entitlement share pool was distributed in the prior fiscal year.

(vi) For fiscal year 2002, an amount equal to the district court costs identified in subsection (2) must be added to each county government's distribution from the entitlement share pool.

(vii) For fiscal year 2002, an amount equal to the district court fees identified in subsection (1)(d) must be subtracted from each county government's distribution from the entitlement share pool.

(6) (a) 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 block grant. If a tax increment financing district referred to in subsection (6)(b) terminates, then the block grant provided for in subsection (6)(b) terminates.

(b) One-half of the payments provided for in this subsection (6)(b) must be made by November 30 and the other half by May 31 of each year. Subject to subsection (6)(a), the entitlement share for tax increment financing districts is as follows:

Cascade	Great Falls - downtown	\$468,966
Deer Lodge	TIF District 1	3,148
Deer Lodge	TIF District 2	3,126
Flathead	Kalispell - District 1	758,359
Flathead	Kalispell - District 2	5,153
Flathead	Kalispell - District 3	41,368
Flathead	Whitefish District	164,660
Gallatin	Bozeman - downtown	34,620
Lewis and Clark	Helena - # 2	731,614
Missoula	Missoula - 1-1B & 1-1C	1,100,507

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Missoula	Missoula - 4-1C	33,343
Silver Bow	Butte - uptown	283,801
Yellowstone	Billings	436,815

(c) The entitlement share for industrial tax increment financing districts is as follows:

(i) for fiscal years 2002 and 2003:

Missoula County	Airport Industrial	\$4,812
Silver Bow	Ramsay Industrial	597,594;

(ii) for fiscal years 2004 and 2005:

Missoula	County Airport Industrial	\$2,406
Silver Bow	Ramsay Industrial	298,797; and

(iii) \$0 for all succeeding fiscal years.

(d) The entitlement share for industrial tax increment financing districts referred to in subsection (6)(c) may not be used to pay debt service on tax increment bonds to the extent that the bonds are secured by a guaranty, a letter of credit, or a similar arrangement provided by or on behalf of an owner of property within the tax increment financing industrial district.

(e) One-half of the payments provided for in subsection (6)(c) must be made by July 30, and the other half must be made in December of each year.

(7) The estimated base year entitlement share pool and any subsequent entitlement share pool for local governments do not include revenue received from countywide transportation block grants or from countywide retirement block grants.

(8) The estimates for the base year entitlement share pool in subsection (1) must be calculated as if the fees in Chapter 515, Laws of 1999, were in effect for all of fiscal year 2001.

(9) (a) If revenue that is included in the sources listed in subsections (1)(b) through (1)(p) is significantly reduced, except through legislative action, the department shall deduct the amount of revenue loss from the entitlement share pool beginning in the succeeding fiscal year and the department shall work with local governments to propose legislation to adjust the entitlement share pool to reflect an allocation of the loss of revenue.

(b) For the purposes of subsection (9)(a), a significant reduction is a loss that causes the amount of revenue received in the current year to be less than 95% of the amount of revenue received in the base year.

(10) A three-fifths vote of each house is required to reduce the amount of the entitlement share calculated pursuant to subsections (1) through (3).

(11) 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.

(12) A local government may appeal the department's estimation of the base year component, the entitlement share pool growth rate, or a local government's allocation of the entitlement share pool, according to the uniform dispute review procedure in 15-1-211."

**Section 5.** Section 15-1-122, MCA, is amended to read:



**“15-1-122. Fund transfers.** (1) There is transferred from the state general fund to the adoption services account, provided for in 42-2-105, \$36,764 for fiscal year 2003. Beginning with fiscal year 2004, the amount of the transfer must be increased by 10% in each succeeding fiscal year.

(2) There is transferred from the state general fund to the department of transportation state special revenue nonrestricted account the following amounts:

(a) \$75,000 in fiscal year 2003;

(b) \$2,960,715 in fiscal year 2004; and

(c) in each succeeding fiscal year, the amount in subsection (2)(b), increased by 1.5% in each succeeding fiscal year.

(3) For fiscal year 2002 and for each succeeding fiscal year, there is transferred from the state general fund to the accounts, entities, or recipients indicated the following amounts:

(a) to the motor vehicle recycling and disposal program provided for in Title 75, chapter 10, part 5:

(i) \$2 for each new application for a motor vehicle title and for each transfer of a motor vehicle title for which a fee is paid pursuant to 61-3-203; and

(ii) \$1 for each passenger car or truck under 8,001 pounds GVW registered for licensing pursuant to Title 61, chapter 3, part 3. Fifteen cents of each dollar must be used for the purpose of reimbursing the hired removal of abandoned vehicles during the calendar year following the calendar year in which the fee was paid. Any portion of the 15 cents not used for abandoned vehicle removal reimbursement during the calendar year following its payment must be used as provided in 75-10-532.

(b) to the noxious weed state special revenue account provided for in 80-7-816:

(i) \$1 for each off-highway vehicle subject to payment of the fee in lieu of tax, as provided for in 23-2-803; and

(ii) \$1.50 for each light vehicle, truck or bus weighing less than 1 ton, logging truck, vehicles weighing more than 1 ton, motorcycle, quadricycle, and motor home subject to registration or reregistration pursuant to 61-3-321;

(c) to the department of fish, wildlife, and parks:

(i) \$2.50 for each motorboat, sailboat, or personal watercraft receiving a certificate of number under 23-2-512, with 20% of the amount received to be used to acquire and maintain pumpout equipment and other boat facilities;

(ii) \$5 for each snowmobile registered under 23-2-616, with \$2.50 to be used for enforcing the purposes of 23-2-601 through 23-2-644 and \$2.50 designated for use in the development, maintenance, and operation of snowmobile facilities;

(iii) \$1 for each duplicate snowmobile decal issued under 23-2-617;

(iv) \$5 for each off-highway vehicle decal issued under 23-2-804 and each off-highway vehicle duplicate decal issued under 23-2-809, with 40% of the money used to enforce the provisions of 23-2-804 and 60% of the money used to develop and implement a comprehensive program and to plan appropriate off-highway vehicle recreational use;

(v) to the state special revenue fund established in 23-1-105, \$3.50 for each recreational vehicle, camper, motor home, and travel trailer registered or reregistered and subject to the fee in 61-3-321 or 61-3-524; and

(vi) an amount equal to 20% of the funds collected pursuant to 23-2-518 to be deposited in the motorboat account to be used as provided in 23-2-533;

(d) to the state veterans' cemetery account, provided for in 10-2-603, ~~\$10 for each veteran's license plate issued pursuant to 61-3-332(10)(a)(ii), (10)(f), and (10)(h)~~ \$10 for each veteran's license plate subject to the fee in [section 2];

(e) to the supplemental benefits for highway patrol officers' retirement account provided for in 19-6-709, 25 cents for each motor vehicle registered, other than trailers or semitrailers registered in other jurisdictions and registered through a proportional registration agreement; and

(f) 25 cents a year for each vehicle subject to the fee in 61-3-321(6) for deposit in the state special revenue fund to the credit of the senior citizens and persons with disabilities transportation services account provided for in 7-14-112.

(4) For fiscal year 2002, there is transferred from the state general fund to the state special revenue fund to be used for purposes of state funding of district court expenses, as provided in 3-5-901, \$5,742,983 in lieu of the amount deposited by the state treasurer under 61-3-509(3), as that subsection read prior to the amendment of 61-3-509 in 2001.

(5) For each fiscal year, beginning with fiscal year 2002, the department of justice shall provide to the department of revenue a count of the vehicles required for the calculations in subsection (3). Transfer amounts for fiscal year 2002 must be based on vehicle counts for calendar year 2000. Transfer amounts in each succeeding fiscal year must be based on vehicle counts in the most recent calendar year for which vehicle information is available.

(6) The amounts transferred from the general fund to the designated recipient must be appropriated as state special revenue in the general appropriations act for the designated purposes."

**Section 6.** Section 15-6-211, MCA, is amended to read:

**"15-6-211. Certain disabled or deceased veterans' residences exempt.** (1) A residence, including the lot on which it is built, that is owned and occupied by a veteran or a veteran's spouse is exempt from property taxation if the veteran:

(a) 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) ~~has been rated 100% disabled because of a service-connected disability by the United States department of veterans affairs or its successor 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; and~~

(iii) ~~has an annual adjusted gross income, as reported on the latest federal income tax return, of not more than \$30,000 for a single person and \$36,000 for a married couple.~~

(2) Property qualifying under subsection (1) is taxed at the rate provided in 15-6-134(2)(a) multiplied by a percentage figure based on income and determined from the following table:

<i>Income Single Person</i>	<i>Income Married Couple</i>	<i>Percentage Multiplier</i>
0 - 30,000	0 - 36,000	0%
30,001 - 33,000	36,001 - 39,000	20%
33,001 - 36,000	39,001 - 42,000	30%
36,001 - 39,000	42,001 - 45,000	50%

~~(2)~~(3) The property tax exemption under this section remains in effect as long as 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) has an annual adjusted gross income, as reported on the latest federal income tax return, of not more than \$25,000;~~

~~(c)~~(b) is unmarried; and

~~(d)~~(c) has obtained from the ~~United States~~ U.S. department of veterans affairs a letter indicating that the veteran was ~~100% service connected disabled at the time of death~~ 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.

(4) Property qualifying under subsection (3) is taxed at the rate provided in 15-6-134(2)(a) multiplied by a percentage figure based on income and determined from the following table:

<i>Income Surviving Spouse</i>	<i>Percentage Multiplier</i>
0 - 25,000	0%
25,001 - 28,000	20%
28,001 - 31,000	30%
31,001 - 34,000	50%

(5) For the purposes of the exemption under this section, the income referred to in subsections (2) and (4) is the taxpayer's federal adjusted gross income, as reported on the latest federal income tax return.

(6) (a) The income levels contained in the tables in subsections (2) and (4) must be adjusted for inflation annually by the department. The adjustment to the income levels is determined by:

(i) multiplying the appropriate dollar amount from the table by the ratio of the PCE for the second quarter of the year prior to the year of application to the PCE for the second quarter of 2002; and

(ii) rounding the product obtained in subsection (6)(a)(i) to the nearest dollar amount.

(b) "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."

**Section 7.** Section 49-4-301, MCA, is amended to read:

**"49-4-301. Eligibility for special parking permit.** (1) The department of justice shall issue a special parking permit to a person who has a disability that limits or impairs the person's mobility and who, as determined by a licensed

physician, a licensed chiropractor, or a licensed advanced practice registered nurse, as provided in 37-8-202, meets one of the following criteria:

- (a) cannot walk 200 feet without stopping to rest;
- (b) is severely limited in ability to walk because of an arthritic, neurological, or orthopedic condition;
- (c) is so severely disabled that the person cannot walk without the use of or assistance from a brace, cane, another person, prosthetic device, wheelchair, or other assistive device;
- (d) uses portable oxygen;
- (e) is restricted by lung disease to the extent that forced expiratory respiratory volume, when measured by spirometry, is less than 1 liter per second or the arterial oxygen tension is less than 60 mm/hg on room air at rest;
- (f) has impairment because of cardiovascular disease or a cardiac condition to the extent that the person's functional limitations are classified as class III or IV under standards accepted by the American heart association; or
- (g) has a disability resulting from an acute sensitivity to automobile emissions or from another disease or physical condition that limits or impairs the person's mobility and that is documented by the licensed physician, the licensed chiropractor, or the licensed advanced practice registered nurse as being comparable in severity to the other conditions listed in this subsection (1).

(2) A person who has a condition expected to improve within 6 months may be issued a temporary placard for a period not to exceed 6 months but may not be issued a special license plate under ~~61-3-332(10)(g)~~ 61-3-332(11). If the condition exists after 6 months, a new temporary placard must be issued for the time period prescribed by the applicant's physician, chiropractor, or advanced practice registered nurse, not to exceed 24 months, upon receipt of a new certification from the disabled person's physician, chiropractor, or advanced practice registered nurse that the conditions specified in subsection (1) continue to exist and are expected to continue for the time specified.

(3) The department of justice may issue special parking permits to an agency or business that provides transportation as a service for persons with a disability. The permits must be used only to load and unload persons with a disability in the special parking place provided for in 49-4-302. As used in this subsection, "disability" means a physical impairment that severely limits a person's ability to walk.

(4) Except as provided in subsection (3), an applicant may not receive more than one permit."

**Section 8.** Section 49-4-302, MCA, is amended to read:

**"49-4-302. Privileges of permitholder — privilege for disabled veteran — exemptions from time limits — requirements for special parking spaces.** (1) The parking permit issued under this part, when displayed, entitles a person to park a motor vehicle in a special parking space reserved for a person with a disability, whether on public property or on private property available for public use, when the person for whom the permit was issued is using the special parking space to enter or exit the vehicle.

(2) A vehicle may not be parked in a parking space on public or private property that is clearly identified by an official sign as being reserved for use by a person with a disability unless:

(a) the vehicle is lawfully displaying a parking permit issued under this part, a distinguishing license plate or placard for a person with a disability that was issued by a foreign jurisdiction conferring parking privileges similar to those conferred in subsection (1), or a specially inscribed license plate displaying the letters "DV" issued under ~~61-3-332(10)(e)(i)(A) or (10)(g) or 61-3-426(2)~~ [section 1(3)(b)] or displaying a wheelchair as provided in 61-3-332(11); and

(b) the reserved parking space is being used by the person for whom the permit, plate, or placard was issued to enter or exit the vehicle.

(3) The governing body of a city, town, or county may exempt vehicles lawfully displaying parking permits issued under this part and vehicles lawfully displaying specially inscribed license plates displaying the letters "DV" issued under ~~61-3-332(10)(e)(i)(A) or (10)(g) or 61-3-426(2)~~ [section 1(3)(b)] or displaying a wheelchair as provided in 61-3-332(11) and parked in public places along public streets from any time limitation imposed upon parking, except in areas where:

(a) stopping, standing, or parking of all vehicles is prohibited;

(b) only special vehicles may be parked; or

(c) parking is not allowed during specific periods of the day in order to accommodate heavy traffic.

(4) In accordance with subsection (2), the governing body of a city, town, or county or appropriate state agency may impose all, but not less than all, of the following requirements with respect to any special parking space constructed after September 30, 1985, and reserved for a person with a disability or a permit holder on ways of this state open to the public, as defined in 61-8-101:

(a) The space must be located on a smooth, level surface as near as practicable to building entrances or walkways that have curb cuts and appropriately designed ramps and access lanes to accommodate wheelchairs.

(b) If parallel to curbside, the parking space must be separated from an adjacent space, either in the front or the rear, by at least 5 feet of striped no-parking area.

(c) If at an angle to curbside, the parking space must be at least 8 feet wide and free of obstruction if located at the end of a line of angle parking spaces, and each other angle parking space designated for a person with a disability must be at least 13 feet wide.

(d) A parking space reserved for a person with a disability must be designated by a sign showing the international symbol of accessibility, indicating that a permit is required, and stating the penalty for a violation. In order to meet the penalty statement requirement, signs existing on October 1, 1993, must have attached a decal stating the penalty for a violation. The sign must be attached to a wall or post in a way that it is not obscured by a vehicle parked in the space."

**Section 9.** Section 49-4-304, MCA, is amended to read:

**"49-4-304. Special license plate or card to be provided and displayed — additional cards allowed for owners of more than one vehicle.** (1) ~~The~~ Unless the department of justice ~~shall provide~~ issued a special license plate under ~~61-3-332(10)(g) or 61-3-426(1) or [section 1(3)(b)] or 61-3-332(11)~~ indicating a special parking privilege, the department shall provide a card to be displayed on or in a motor vehicle to indicate a parking privilege granted under this part. The special license plate must be affixed to the vehicle according to 61-3-301, or the card must be prominently displayed in the windshield of a

vehicle when the parking privilege is being used by the person with a disability in a vehicle other than the one to which a special license plate is affixed.

(2) Subject to the provisions of 49-4-301 through 49-4-305, a person who is eligible to receive a special parking permit and who owns more than one motor vehicle may request and the department of justice shall provide additional cards described in subsection (1) to equal the number of motor vehicles, other than commercial vehicles, owned by the person.

(3) Upon application under 49-4-303, a person with a disability who does not hold a driver's license or does not own a vehicle may receive a card described in subsection (1) to be displayed in a vehicle in which the person with a disability is being conveyed when the parking privilege is being used.

(4) The card must bear a representation of a wheelchair as the symbol of a person with a disability."

**Section 10.** Section 61-3-313, MCA, is amended to read:

**"61-3-313. Vehicles subject to staggered registration.** For purposes of 61-3-313 through 61-3-316, "vehicle" means a motor vehicle, as defined in 61-1-102, that is subject to annual registration in this state except:

(1) vehicles owned or leased and operated by the government of the United States or by the state of Montana or a political subdivision of the state;

(2) mobile homes and motor homes;

(3) vehicles that are registered in accordance with or subject to ~~61-3-332(10)(c)(i)(A)~~ [section 1(3)(b)], 61-3-411, or 61-3-421;

(4) trucks exceeding a 1-ton rated capacity;

(5) trailers, semitrailers, tractors, buses, motorcycles, quadricycles, and motor-driven cycles;

(6) special mobile equipment as defined in 61-1-104;

(7) motor vehicles registered as part of a fleet under 61-3-318; and

(8) apportionable vehicles registered as part of a fleet, as defined in 61-3-712, that is subject to the provisions of 61-3-711 through 61-3-733."

**Section 11.** Section 61-3-321, MCA, is amended to read:

**"61-3-321. Registration fees of vehicles — certain vehicles exempt from license or registration fees — disposition of fees.** (1) ~~Registration~~ Except as otherwise provided in this section, registration or license fees must be paid upon registration or reregistration of motor vehicles, trailers, and semitrailers, in accordance with this chapter, as follows:

(a) light vehicles under 2,850 pounds, \$13.75;

(b) trailers with a declared weight of less than 2,500 pounds and semitrailers, \$8.25;

(c) motor vehicles registered pursuant to 61-3-411 that are:

(i) over 2,850 pounds, \$10; and

(ii) under 2,850 pounds, \$5;

(d) off-highway vehicles registered pursuant to 23-2-817, \$9;

(e) light vehicles over 2,850 pounds, trucks and buses less than 1 ton, and heavy trucks in excess of 1 ton, \$18.75;

(f) logging trucks less than 1 ton, \$23.75;

- (g) motor homes, \$22.25;
- (h) motorcycles and quadricycles, \$9.75;
- (i) trailers and semitrailers between 2,500 and 6,000 pounds, \$11.25;
- (j) trailers and semitrailers in excess of 6,000 pounds, other than trailers and semitrailers registered in other jurisdictions and registered through a proportional registration agreement, \$16.25;
- (k) travel trailers, \$11.75; and
- (l) recreational vehicles, \$3.50.

(2) If a motor vehicle, trailer, or semitrailer is originally registered 6 months after the time of registration as set by law, the registration or license fee for the remainder of the year is one-half of the regular fee.

(3) An additional fee of \$5 must be collected for the registration of each motorcycle as a safety fee and must be deposited in the state motorcycle safety account provided for in 20-25-1002.

(4) A fee of \$2 for each set of new number plates must be collected when number plates provided for under 61-3-332(2) are issued.

(5) 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, 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.

(6) (a) Except as provided in 61-3-562 and subsection (6)(b) of this section, a fee of 25 cents a year for each registration of a vehicle must be collected when a vehicle is registered or reregistered. The revenue derived from this fee must be forwarded by the county treasurer for deposit in the general fund for transfer to the credit of the senior citizens and persons with disabilities transportation services account provided for in 7-14-112.

(b) The following vehicles are not subject to the fee imposed in subsection (6)(a):

(i) trailers and semitrailers registered in other jurisdictions and registered through a proportional registration agreement; and

(ii) travel trailers, recreational vehicles, and off-highway vehicles registered pursuant to 23-2-817.

(7) The provisions of this section relating to the payment of registration fees or new number plate fees do not apply when number plates are transferred to a replacement vehicle under 61-3-317, 61-3-332, or 61-3-335.

(8) A person ~~qualifying eligible for a waiver under 61-3-332(10)(d) [section 3]~~ is exempt from the fees required under this section.

(9) Except as otherwise provided in this section, revenue collected under this section must be deposited in the state general fund."

**Section 12.** Section 61-3-332, MCA, is amended to read:

**"61-3-332. (Temporary) Number plates.** (1) A motor vehicle that is driven upon the streets or highways of Montana must display both front and rear number plates, bearing the distinctive number assigned to the vehicle.

(2) In addition to special license plates, collegiate license plates, and generic specialty license plates authorized under this chapter, a separate series of number plates must be issued, in the manner specified, for each of the following vehicle or dealer types:

- (a) passenger vehicles, including automobiles, vans, and sport utility vehicles;
- (b) motorcycles and quadricycles, bearing the letters "MC" or "CYCLE";
- (c) trucks, bearing the letter "T" or the word "TRUCK";
- (d) trailers, bearing the letters "TR" or the word "TRAILER";
- (e) dealers of new, or new and used, motor vehicles, including trucks and trailers, bearing the letter "D" or the word "DEALER";
- (f) dealers of used motor vehicles only, including trucks and trailers, bearing the letters "UD" or the letter "U" and the word "DEALER";
- (g) dealers of motorcycles or quadricycles, bearing the letters "MCD" or the letters "MC" and the word "DEALER";
- (h) dealers of trailers or semitrailers, bearing the letters "DTR" or the letters "TR" and the word "DEALER"; and
- (i) dealers of recreational vehicles, bearing the letters "RV" or the letter "R" and the word "DEALER".

(3) (a) Except as provided in 61-3-479 and subsections (4)(c) and (4)(d) of this section, all number plates for motor vehicles must be issued for a maximum period of 4 years, bear a distinctive marking, and be furnished by the department. In years when number plates are not issued, the department shall provide nonremovable stickers bearing appropriate registration numbers that must be affixed to the license plates in use.

(b) For motorcycles, quadricycles, and light vehicles that are permanently registered as provided in 61-3-527 or 61-3-315 and 61-3-562, the department shall provide distinctive nonremovable stickers indicating that the vehicle is permanently registered. The stickers must be affixed to the license plates in use.

(4) (a) Subject to the provisions of this section, the department shall create a new design for number plates as provided in this section, and it shall manufacture the newly designed number plates for issuance after December 31, 1999, to replace at renewal, as required in 61-3-312 and 61-3-314, number plates that were displayed on motor vehicles before that date.

(b) Beginning January 1, 2000, the department shall manufacture and issue new number plates every 4 years.

(c) A light vehicle that is registered for a 24-month period, as provided in 61-3-315 and 61-3-560, may display the number plate and plate design in effect at the time of registration for the entire 24-month registration period.

(d) A motorcycle, quadricycle, or light vehicle that is permanently registered, as provided in 61-3-527 or 61-3-315 and 61-3-562, may display the number plate and plate design in effect at the time of registration for the entire period that the vehicle is permanently registered.

(5) In the case of passenger vehicles and trucks, plates must be of metal 6 inches wide and 12 inches in length. Except for generic specialty license plates, the outline of the state of Montana must be used as a distinctive border on the license plates, and the word "Montana" must be placed on each plate. Registration plates must be treated with a reflectorized background material according to specifications prescribed by the department.

(6) The distinctive registration numbers 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, and generic specialty license plates, the distinctive registration number or letter-number combination assigned to the 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.

(7) For the use of exempt motor vehicles and motor vehicles that are exempt from the registration fee as provided in 61-3-560(2)(a), in addition to the markings provided in this section, number plates must bear the following distinctive markings:

(a) For vehicles 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 vehicles 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 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 number 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 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 number plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the number plates requires it and a year number may not be displayed on the number plates.

(8) Number plates issued to a passenger vehicle, truck, trailer, motorcycle, or quadricycle may be transferred only to a replacement passenger vehicle, truck, trailer, motorcycle, or quadricycle. A registration or license fee may not be assessed upon a transfer of a number plate under 61-3-317 and 61-3-335.

(9) 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 may be formed, beginning with the number 57.

(10) 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 (6), except that the county number must be replaced by a nonremovable design or decal designating the group or organization to which the applicant belongs. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of regular license plates, must be placed or mounted on a vehicle owned by the person who is eligible to receive them, and must be removed upon sale or other disposition of the vehicle. ~~The special license plates must be issued to national guard members, former prisoners of war, persons with disabilities, reservists, disabled veterans, survivors of the Pearl Harbor attack, veterans of the armed services, national guard veterans, legion of valor members, or veterans of the armed services who were awarded the purple heart medal, who comply with the following provisions:~~

~~(a) (i) An active member of the Montana national guard may be issued special license plates with a design or decal displaying the letters "NG". The adjutant general shall issue to each active member of the Montana national guard a certificate authorizing the department to issue national guard plates, numbered in sets of two with a different number on each set, and the member shall surrender the plates to the department upon becoming ineligible to use them.~~

~~(ii) The department may issue national guard veteran plates, bearing a design or decal displaying the Montana national guard insignia and the words "National Guard veteran" and numbered in sets of two with a different number on each set, to an applicant who presents to the department a copy of certification of national guard retirement eligibility issued by the appropriate authorities for the applicant or the applicant's deceased spouse and who pays, in addition to all taxes and fees required by parts 3 and 5 of this chapter, a national guard veteran license plate fee of \$10. The additional fee must be distributed in accordance with the provisions of subsection (12).~~

~~(b) An active member of the reserve armed forces of the United States of America who is a resident of this state may be issued special license plates with a design or decal displaying the following: United States army reserve, AR (symbol); United States naval reserve, NR (anchor); United States air force reserve, AFR (symbol); and United States marine corps reserve, MCR (globe and anchor). The commanding officer of each armed forces reserve unit shall issue to each eligible member of the reserve unit a certificate authorizing the issuance of special license plates, numbered in sets of two with a different number on each set. The member shall surrender the plates to the department upon becoming ineligible to use them.~~

~~(c) (i) Subject to the limitation in 61-3-453, a resident of Montana who is a veteran of the armed forces of the United States and who has been awarded the purple heart and is 50% or more disabled because of an injury that has been determined by the department of veterans affairs to be service connected or who is 100% disabled because of an injury that has been determined by the department of veterans affairs to be service connected may, upon presentation to the department of documentation required in subsection (10)(f)(i) and proof of the required disability, be issued:~~

~~(A) a special license plate under this section with the purple heart decal or a design or decal displaying the letters "DV"; or~~

~~(B) one set of any other military-related plates that the 50% or more disabled veteran who has been awarded the purple heart or the disabled veteran is eligible to receive under this section.~~

~~(ii) The fee for original or renewal registration by a 100% disabled veteran for a motor vehicle, as defined in 61-1-102, that is not used for commercial purposes is \$5 and is in lieu of all other fees and taxes for that vehicle under this chapter irrespective of which set of military license plates the veteran is eligible to receive and chooses to display under subsection (10)(c)(i).~~

~~(iii) The fee for original or renewal registration for a motor vehicle, as defined in 61-1-102, that is not used for commercial purposes by a 50% or more disabled veteran who has been awarded the purple heart and who meets the criteria in subsection (10)(c)(i) is \$5 and is in lieu of other taxes and fees for that vehicle under this chapter, except for the \$10 fee required in subsection (10)(f)(iii), regardless of which set of military license plates the veteran is eligible to receive and chooses to display under subsection (10)(c)(i). Special license plates issued to a 50% or more disabled veteran who has been awarded the purple heart under subsection (10)(c) may be retained by a surviving spouse, subject to payment of all taxes and fees required under parts 3 and 4 of this chapter as provided in subsection (10)(f)(iii).~~

~~(iv) Special license plates issued to a disabled veteran and, except as provided in subsection (10)(c)(iii), to a 50% or more disabled veteran who has been awarded the purple heart are not transferable to another person.~~

~~(v) A 50% or more disabled veteran who has been awarded the purple heart or a disabled veteran is not entitled to a special license plate for more than one vehicle.~~

~~(vi) A vehicle that is lawfully displaying a disabled veteran's plate with a design or decal displaying the letters "DV" and that is conveying a 100% disabled veteran is entitled to the parking privileges allowed a person with a disability's vehicle under this title.~~

~~(d) (i) A Montana resident who is a veteran of the armed forces of the United States and was captured and held prisoner by a military force of a foreign nation, documented by the veteran's service record, may upon application and presentation of proof be issued special license plates, numbered in sets of two with a different number on each set, with a design or decal displaying the words "ex-prisoner of war" or an abbreviation that the department considers appropriate.~~

~~(ii) Fees required under 61-3-321(1) and (6) may not be assessed upon one set of license plates issued to an ex-prisoner of war under this subsection (10)(d).~~

~~(iii) A special license plate fee may not be assessed upon one set of special license plates issued to an ex-prisoner of war under this subsection (10)(d).~~

~~(iv) An ex-prisoner of war is exempt from the registration fees imposed under 61-3-560 through 61-3-562 for one vehicle that displays a set of ex-prisoner of war license plates.~~

~~(v) A surviving spouse of an ex-prisoner of war may retain the special license plates that have been issued to the ex-prisoner of war if the spouse complies with the provisions of 61-3-457.~~

~~(e) Except as provided in subsections (10)(c) and (10)(d), upon payment of all taxes and fees required by parts 3 and 5 of this chapter and upon furnishing proof satisfactory to the department that the applicant meets the requirements of this subsection (10)(e), the department shall issue to a Montana resident who is a veteran of the armed services of the United States special license plates, numbered in sets of two with a different number on each set, designed to indicate that the applicant is a survivor of the Pearl Harbor attack if the~~

~~applicant was a member of the United States armed forces on December 7, 1941, was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) at Pearl Harbor, the island of Oahu, or was offshore at a distance of not more than 3 miles, and received an honorable discharge from the United States armed forces. If special license plates issued under subsection (10)(d) and this subsection are lost, stolen, or mutilated, the recipient of the plates is entitled to replacement plates upon request and without charge.~~

~~(f) A motor vehicle owner and resident of this state who is a veteran or the surviving spouse of a veteran of the armed services of the United States may be issued license plates inscribed as provided in subsection (10)(f)(i) if the veteran was separated from the armed services under other than dishonorable circumstances or was awarded the purple heart medal:~~

~~(i) Upon submission of a department of defense form 214(DD-214) or its successor or documents showing an other than dishonorable discharge or a reenlistment, proper identification, and other relevant documents to show an applicant's qualification under this subsection, there must be issued to the applicant, in lieu of the regular license plates prescribed by law, special license plates numbered in sets of two with a different number on each set. The plates must display:~~

~~(A) the word "VETERAN" and a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the record of service verified in the application; or~~

~~(B) a symbol representing the purple heart medal.~~

~~(ii) Plates must be furnished by the department to the county treasurer, who shall issue them to a qualified veteran or to the veteran's surviving spouse. The plates must be placed or mounted on the vehicle owned by the veteran or the veteran's surviving spouse designated in the application and must be removed upon sale or other disposition of the vehicle.~~

~~(iii) Except as provided for 100% disabled veterans and ex-prisoners of war in subsections (10)(c) and (10)(d), a veteran or surviving spouse who receives special license plates under this subsection (10)(f) is liable for payment of all taxes and fees required under parts 3 and 4 of this chapter and a special veteran's or purple heart medal license plate fee of \$10.~~

~~(g)(11) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, 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.~~

~~(h) The department may issue legion of valor license plates, bearing a design or decal depicting the recognized legion of valor medallion and numbered in sets of two with a different number on each set, to an applicant who presents to the department proper documentation of receipt of a legion of valor award by appropriate authorities to the applicant or the applicant's deceased spouse and who pays all taxes and fees required by parts 3 and 5 of this chapter.~~

~~(i) An active member of the armed forces of the United States who is a resident of the state or who is stationed outside of Montana may be issued special license plates inscribed as provided in subsection (10)(f)(i)(A). The member's commanding officer may issue a certificate or some other relevant document to show the applicant's qualification and authorizing the issuance of the special license plates in sets of two with a different number on each set. The~~

~~member is liable for payment of all taxes and fees required by this chapter, except as provided in 61-3-456.~~

~~(1)~~ (12) The provisions of this section do not apply to a motor vehicle, trailer, or semitrailer 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.

~~(2) Fees collected under this section must be deposited in the state general fund. (Terminates July 1, 2005—sec. 21, Ch. 402, L. 2001.)~~

**61-3-332. (Effective July 1, 2005) Number plates.** (1) A motor vehicle that is driven upon the streets or highways of Montana must display both front and rear number plates, bearing the distinctive number assigned to the vehicle.

(2) In addition to special license plates and collegiate license plates authorized under this chapter, a separate series of number plates must be issued, in the manner specified, for each of the following vehicle or dealer types:

(a) passenger vehicles, including automobiles, vans, and sport utility vehicles;

(b) motorcycles and quadricycles, bearing the letters "MC" or "CYCLE";

(c) trucks, bearing the letter "T" or the word "TRUCK";

(d) trailers, bearing the letters "TR" or the word "TRAILER";

(e) dealers of new, or new and used, motor vehicles, including trucks and trailers, bearing the letter "D" or the word "DEALER";

(f) dealers of used motor vehicles only, including trucks and trailers, bearing the letters "UD" or the letter "U" and the word "DEALER";

(g) dealers of motorcycles or quadricycles, bearing the letters "MCD" or the letters "MC" and the word "DEALER";

(h) dealers of trailers or semitrailers, bearing the letters "DTR" or the letters "TR" and the word "DEALER"; and

(i) dealers of recreational vehicles, bearing the letters "RV" or the letter "R" and the word "DEALER".

(3) (a) Except as provided in subsections (4)(c) and (4)(d), all number plates for motor vehicles must be issued for a maximum period of 4 years, bear a distinctive marking, and be furnished by the state. In years when number plates are not issued, the department shall provide nonremovable stickers bearing appropriate registration numbers that must be affixed to the license plates in use.

(b) For motorcycles, quadricycles, and light vehicles that are permanently registered as provided in 61-3-527 or 61-3-315 and 61-3-562, the department shall provide distinctive nonremovable stickers indicating that the vehicle is permanently registered. The stickers must be affixed to the license plates in use.

(4) (a) Subject to the provisions of this section, the department shall create a new design for number plates as provided in this section, and it shall manufacture the newly designed number plates for issuance after December 31, 1999, to replace at renewal, as required in 61-3-312 and 61-3-314, number plates that were displayed on motor vehicles before that date.

(b) Beginning January 1, 2000, the department shall manufacture and issue new number plates every 4 years.

(c) A light vehicle that is registered for a 24-month period, as provided in 61-3-315 and 61-3-560, may display the number plate and plate design in effect at the time of registration for the entire 24-month registration period.

(d) A motorcycle, quadricycle, or light vehicle that is permanently registered, as provided in 61-3-527 or 61-3-315 and 61-3-562, may display the number plate and plate design in effect at the time of registration for the entire period that the vehicle is permanently registered.

(5) In the case of passenger vehicles and trucks, plates must be of metal 6 inches wide and 12 inches in length. The outline of the state of Montana must be used as a distinctive border on the license plates, and the word "Montana" and the year must be placed across the plates. Registration plates must be treated with a reflectorized background material according to specifications prescribed by the department.

(6) The distinctive registration numbers 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. The distinctive registration number or letter-number combination assigned to the 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.

(7) For the use of exempt motor vehicles and motor vehicles that are exempt from the registration fee as provided in 61-3-560(2)(a), in addition to the markings provided in this section, number plates must bear the following distinctive markings:

(a) For vehicles 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 vehicles 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 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 number 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 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 number plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the number plates requires it and a year number may not be displayed on the number plates.

(8) Number plates issued to a passenger vehicle, truck, trailer, motorcycle, or quadricycle may be transferred only to a replacement passenger vehicle, truck, trailer, motorcycle, or quadricycle. A registration or license fee may not be assessed upon a transfer of a number plate under 61-3-317 and 61-3-335.

(9) 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 may be formed, beginning with the number 57.

(10) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463, must be a separate series of plates, numbered as provided in subsection (6), except that the county number must be replaced by a nonremovable design or decal designating the group or organization to which the applicant belongs. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of regular license plates, must be placed or mounted on a vehicle owned by the person who is eligible to receive them, and must be removed upon sale or other disposition of the vehicle. ~~The special license plates must be issued to national guard members, former prisoners of war, persons with disabilities, reservists, disabled veterans, survivors of the Pearl Harbor attack, veterans of the armed services, national guard veterans, legion of valor members, or veterans of the armed services who were awarded the purple heart medal, who comply with the following provisions:~~

~~(a) (i) An active member of the Montana national guard may be issued special license plates with a design or decal displaying the letters "NG". The adjutant general shall issue to each active member of the Montana national guard a certificate authorizing the department to issue national guard plates, numbered in sets of two with a different number on each set, and the member shall surrender the plates to the department upon becoming ineligible to use them.~~

~~(ii) The department may issue national guard veteran plates, bearing a design or decal displaying the Montana national guard insignia and the words "National Guard veteran" and numbered in sets of two with a different number on each set, to an applicant who presents to the department a copy of certification of national guard retirement eligibility issued by the appropriate authorities for the applicant or the applicant's deceased spouse and who pays, in addition to all taxes and fees required by parts 3 and 5 of this chapter, a national guard veteran license plate fee of \$10. The additional fee must be distributed in accordance with the provisions of subsection (12).~~

~~(b) An active member of the reserve armed forces of the United States of America who is a resident of this state may be issued special license plates with a design or decal displaying the following: United States army reserve, AR (symbol); United States naval reserve, NR (anchor); United States air force reserve, AFR (symbol); and United States marine corps reserve, MCR (globe and anchor). The commanding officer of each armed forces reserve unit shall issue to each eligible member of the reserve unit a certificate authorizing the issuance of special license plates, numbered in sets of two with a different number on each set. The member shall surrender the plates to the department upon becoming ineligible to use them.~~

~~(c) (i) Subject to the limitation in 61-3-453, a resident of Montana who is a veteran of the armed forces of the United States and who has been awarded the~~

~~purple heart and is 50% or more disabled because of an injury that has been determined by the department of veterans affairs to be service connected or who is 100% disabled because of an injury that has been determined by the department of veterans affairs to be service connected may, upon presentation to the department of documentation required in subsection (10)(f)(i) and proof of the required disability, be issued:~~

~~(A) a special license plate under this section with the purple heart decal or a design or decal displaying the letters "DV"; or~~

~~(B) one set of any other military related plates that the 50% or more disabled veteran who has been awarded the purple heart or the disabled veteran is eligible to receive under this section.~~

~~(ii) The fee for original or renewal registration by a 100% disabled veteran for a motor vehicle, as defined in 61-1-102, that is not used for commercial purposes is \$5 and is in lieu of all other fees and taxes for that vehicle under this chapter irrespective of which set of military license plates the veteran is eligible to receive and chooses to display under subsection (10)(c)(i).~~

~~(iii) The fee for original or renewal registration for a motor vehicle, as defined in 61-1-102, that is not used for commercial purposes by a 50% or more disabled veteran who has been awarded the purple heart and who meets the criteria in subsection (10)(c)(i) is \$5 and is in lieu of other taxes and fees for that vehicle under this chapter, except for the \$10 fee required in subsection (10)(f)(iii), regardless of which set of military license plates the veteran is eligible to receive and chooses to display under subsection (10)(c)(i). Special license plates issued to a 50% or more disabled veteran who has been awarded the purple heart under subsection (10)(c) may be retained by a surviving spouse, subject to payment of all taxes and fees required under parts 3 and 4 of this chapter as provided in subsection (10)(f)(iii).~~

~~(iv) Special license plates issued to a disabled veteran and, except as provided in subsection (10)(c)(iii), to a 50% or more disabled veteran who has been awarded the purple heart are not transferable to another person.~~

~~(v) A 50% or more disabled veteran who has been awarded the purple heart or a disabled veteran is not entitled to a special license plate for more than one vehicle.~~

~~(vi) A vehicle that is lawfully displaying a disabled veteran's plate with a design or decal displaying the letters "DV" and that is conveying a 100% disabled veteran is entitled to the parking privileges allowed a person with a disability's vehicle under this title.~~

~~(d) (i) A Montana resident who is a veteran of the armed forces of the United States and was captured and held prisoner by a military force of a foreign nation, documented by the veteran's service record, may upon application and presentation of proof be issued special license plates, numbered in sets of two with a different number on each set, with a design or decal displaying the words "ex prisoner of war" or an abbreviation that the department considers appropriate.~~

~~(ii) Fees required under 61-3-321(1) and (6) may not be assessed upon one set of license plates issued to an ex-prisoner of war under this subsection (10)(d).~~

~~(iii) A special license plate fee may not be assessed upon one set of special license plates issued to an ex-prisoner of war under this subsection (10)(d).~~



~~(iv) An ex-prisoner of war is exempt from the registration fees imposed under 61-3-560 through 61-3-562 for one vehicle that displays a set of ex-prisoner of war license plates.~~

~~(v) A surviving spouse of an ex-prisoner of war may retain the special license plates that have been issued to the ex-prisoner of war if the spouse complies with the provisions of 61-3-457.~~

~~(c) Except as provided in subsections (10)(c) and (10)(d), upon payment of all taxes and fees required by parts 3 and 5 of this chapter and upon furnishing proof satisfactory to the department that the applicant meets the requirements of this subsection (10)(c), the department shall issue to a Montana resident who is a veteran of the armed services of the United States special license plates, numbered in sets of two with a different number on each set, designed to indicate that the applicant is a survivor of the Pearl Harbor attack if the applicant was a member of the United States armed forces on December 7, 1941, was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) at Pearl Harbor, the island of Oahu, or was offshore at a distance of not more than 3 miles, and received an honorable discharge from the United States armed forces. If special license plates issued under subsection (10)(d) and this subsection are lost, stolen, or mutilated, the recipient of the plates is entitled to replacement plates upon request and without charge.~~

~~(f) A motor vehicle owner and resident of this state who is a veteran or the surviving spouse of a veteran of the armed services of the United States may be issued license plates inscribed as provided in subsection (10)(f)(i) if the veteran was separated from the armed services under other than dishonorable circumstances or was awarded the purple heart medal:~~

~~(i) Upon submission of a department of defense form 214(DD-214) or its successor or documents showing an other than dishonorable discharge or a reenlistment, proper identification, and other relevant documents to show an applicant's qualification under this subsection, there must be issued to the applicant, in lieu of the regular license plates prescribed by law, special license plates numbered in sets of two with a different number on each set. The plates must display:~~

~~(A) the word "VETERAN" and a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the record of service verified in the application; or~~

~~(B) a symbol representing the purple heart medal.~~

~~(ii) Plates must be furnished by the department to the county treasurer, who shall issue them to a qualified veteran or to the veteran's surviving spouse. The plates must be placed or mounted on the vehicle owned by the veteran or the veteran's surviving spouse designated in the application and must be removed upon sale or other disposition of the vehicle.~~

~~(iii) Except as provided for 100% disabled veterans and ex-prisoners of war in subsections (10)(c) and (10)(d), a veteran or surviving spouse who receives special license plates under this subsection (10)(f) is liable for payment of all taxes and fees required under parts 3 and 4 of this chapter and a special veteran's or purple heart medal license plate fee of \$10.~~

~~(g)(11) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, 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.~~

~~(h) The department may issue legion of valor license plates, bearing a design or decal depicting the recognized legion of valor medallion and numbered in sets of two with a different number on each set, to an applicant who presents to the department proper documentation of receipt of a legion of valor award by appropriate authorities to the applicant or the applicant's deceased spouse and who pays all taxes and fees required by parts 3 and 5 of this chapter.~~

~~(i) An active member of the armed forces of the United States who is a resident of the state or who is stationed outside of Montana may be issued special license plates inscribed as provided in subsection (10)(f)(i)(A). The member's commanding officer may issue a certificate or some other relevant document to show the applicant's qualification and authorizing the issuance of the special license plates in sets of two with a different number on each set. The member is liable for payment of all taxes and fees required by this chapter, except as provided in 61-3-456.~~

~~(11) (12) The provisions of this section do not apply to a motor vehicle, trailer, or semitrailer 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.~~

~~(12) Fees collected under this section must be deposited in the state general fund."~~

**Section 13.** Section 61-3-407, MCA, is amended to read:

**"61-3-407. (Temporary) Personalized veterans', national guard veterans', legion of valor members', special veteran and generic specialty license plates.** (1) Subject to the provisions of 61-3-405 and 61-3-406, an application for veterans', national guard veterans', legion of valor members', or generic specialty license plates under 61-3-332(10)(a)(ii), (10)(f), or (10)(h) or special veteran license plates under [section 1(3)] or generic specialty license plates under 61-3-472 through 61-3-481 may be combined with an application for personalized plates.

~~(2) An~~ The application for personalized veterans', national guard veterans', legion of valor members', or generic specialty license plates must be made on a form supplied by the department. (Terminates June 30, 2005—sec. 21, Ch. 402, L. 2001.)

**61-3-407. (Effective July 1, 2005) Personalized veterans', national guard veterans', or legion of valor members' special veteran license plates.** (1) Subject to the provisions of 61-3-405 and 61-3-406, an application for veterans', national guard veterans', or legion of valor members' special veteran license plates under 61-3-332(10)(a)(ii), (10)(f), or (10)(h) [section 1(3)] may be combined with an application for personalized plates.

~~(2) An~~ The application for personalized veterans', national guard veterans', or legion of valor members' license plates must be made on a form supplied by the department."

**Section 14.** Section 61-3-426, MCA, is amended to read:

**"61-3-426. Combined license plates.** (1) An application for license plates for amateur radio operators may be combined with an application for the special license plates issued to veterans of the armed services who comply with the provisions in 61-3-332(10)(d), (10)(e), and (10)(f) under [section 1(3)] or with an application for special license plates issued to a person with a disability who complies with the provisions in 61-3-332(10)(g) 61-3-332(11).

(2) ~~The applicant for the Issuance of combined license plates is liable for the payment of all taxes and fees applicable to regular motor vehicle license plates and shall pay an additional fee of \$5 for the original issuance as provided in subject to 61-3-422.~~

(2) ~~An application for license plates for amateur radio operators may be combined with an application for license plates for disabled veterans as provided in 61-3-332(10)(c). The fees for the registration of the combined license plates are the fees provided for in 61-3-332(10)(c) and in 61-3-422. The fees are in lieu of all other fees and taxes for that vehicle under this chapter.~~

(3) ~~An application for license plates for amateur radio operators may be combined with an application for license plates for ex prisoners of war as provided in 61-3-332(10)(d). The fees required under 61-3-321(1) and (6) may not be assessed upon one set of combination license plates issued to an ex prisoner of war. An ex prisoner of war receiving combination license plates under this section is liable for the fees required under 61-3-422.~~

(4)(3) The combined license plates must be stamped with the official amateur radio call letters of the owner as assigned to the owner by the federal communications commission. The plates must also be stamped with the design or decal provided for in ~~61-3-332(10)(c), (10)(d), (10)(e), (10)(f), or (10)(g) [section 1(3)] or 61-3-332(11).~~

**Section 15.** Section 61-3-455, MCA, is amended to read:

**“61-3-455. Violation a misdemeanor.** A person who violates ~~61-3-452 or 61-3-453 [section 1] or [section 3]~~ or who knowingly and wrongfully attempts to secure license plates under 61-3-332, ~~[section 1], or [section 3]~~ ~~shall be~~ is guilty of a misdemeanor and *shall be* punished by a fine of not less than \$100 or imprisonment for not more than 30 days, or both.”

**Section 16.** Section 61-3-560, MCA, is amended to read:

**“61-3-560. Light vehicle registration fee — exemptions — 24-month registration.** (1) Except as provided in subsections (2) and (3), there is a registration fee imposed on light vehicles. The registration fee is in addition to other annual registration fees.

(2) The following vehicles are exempt from the fee imposed in subsection (1):

(a) light vehicles that meet the description of property exempt from taxation under 15-6-201(1)(a), (1)(c) through (1)(e), (1)(g), (1)(m), (1)(o), (1)(q), or (1)(w), 15-6-203, or 15-6-215, except as provided in 61-3-520;

(b) a light vehicle owned by a ~~100% disabled veteran or by a 50% or more disabled veteran who has been awarded the purple heart qualifying for one set of special license plates under 61-3-332(10)(c) or 61-3-426~~ person eligible for a waiver of registration fees under [section 3];

(c) ~~a light vehicle owned by an ex prisoner of war qualifying for one set of special plates under 61-3-332(10)(d) or a surviving spouse of an ex prisoner of war under 61-3-457; and~~

(d)(c) a light vehicle registered under 61-3-456.

(3) A dealer for light vehicles is not required to pay the registration fee for light vehicles that constitute inventory of the dealership and that are reported under 61-3-501.

(4) The owner of a light vehicle subject to the provisions of 61-3-313 through 61-3-316 may register the light vehicle for a period not to exceed 24 months. The

application for registration or reregistration must be accompanied by the registration fee and all other fees required in this chapter for each 12-month period of the 24-month period. However, the registration fees required under 61-3-321(1)(a) or (1)(b) paid at the time of registration or reregistration apply for the entire 24-month registration period.”

**Section 17. Repealer.** Sections 61-3-452, 61-3-453, 61-3-454, and 61-3-457, MCA, are repealed.

**Section 18. Codification instruction.** [Sections 1 through 3] are intended to be codified as an integral part of Title 61, chapter 3, part 4, and the provisions of Title 61, chapter 3, part 4, apply to [sections 1 through 3].

**Section 19. Coordination instruction.** (1) If House Bill No. 250 and [this act] are both passed and approved, then House Bill No. 250 is void.

(2) If Senate Bill No. 377 and [this act] are both passed and approved, then Senate Bill No. 377 is void.

**Section 20. Effective date.** [This act] is effective January 1, 2004.

Approved April 18, 2003

## CHAPTER NO. 400

[SB 98]

AN ACT PROVIDING THAT PERSONAL-CARE FACILITIES ARE COMMUNITY RESIDENTIAL FACILITIES FOR PURPOSES OF INCLUDING THOSE FACILITIES AS RESIDENTIAL USES OF PROPERTY UNDER ZONING REGULATIONS; AMENDING SECTION 76-2-411, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

**Section 1.** Section 76-2-411, MCA, is amended to read:

**“76-2-411. Definition of community residential facility.** “Community residential facility” means:

(1) a community group home for developmentally, mentally, or severely disabled persons which does not provide skilled or intermediate nursing care;

(2) a youth foster home or youth group home as defined in 52-2-602;

(3) a halfway house operated in accordance with regulations of the department of public health and human services for the rehabilitation of alcoholics or drug dependent persons; ~~or~~

(4) a licensed adult foster family care home; *or*

(5) *a personal-care facility licensed under 50-5-227.*”

**Section 2. Coordination instruction.** If House Bill No. 51 and [this act] are both passed and approved, then the phrase “a personal-care facility” in subsection (5) of [section 1] must read “an assisted living facility”.

**Section 3. Applicability.** [This act] applies to personal-care facilities established in a residential zone after October 1, 2003.

Approved April 17, 2003

**CHAPTER NO. 401**

[SB 105]

AN ACT PROVIDING FOR THE ACCEPTANCE OF NATIONAL ACCREDITATION FOR OUTPATIENT CENTERS FOR SURGICAL SERVICES, BEHAVIORAL TREATMENT PROGRAMS, CHEMICAL DEPENDENCY TREATMENT PROGRAMS, RESIDENTIAL TREATMENT FACILITIES, AND MENTAL HEALTH CENTERS FOR PURPOSES OF HEALTH CARE FACILITY LICENSURE; ELIMINATING HEALTH MAINTENANCE ORGANIZATIONS FROM BEING LICENSED AS HEALTH CARE FACILITIES; AND AMENDING SECTIONS 50-5-101, 50-5-103, AND 53-6-702, MCA.

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

**Section 1.** Section 50-5-101, MCA, is amended to read:

**"50-5-101. Definitions.** As used in parts 1 through 3 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Accreditation association for ambulatory health care" means the organization nationally recognized by that name that surveys ambulatory surgical centers upon their requests and grants accreditation status to the ambulatory surgical centers that it finds meet its standards and requirements.

~~(2)~~(3) "Adult day-care center" means a facility, freestanding or connected to another health care facility, that provides adults, on a regularly scheduled basis, with the care necessary to meet the needs of daily living but that does not provide overnight care.

~~(3)~~(4) (a) "Adult foster care home" means a private home or other facility that offers, except as provided in 50-5-216, only light personal care or custodial care to four or fewer disabled adults or aged persons who are not related to the owner or manager of the home by blood, marriage, or adoption or who are not under the full guardianship of the owner or manager.

(b) As used in this subsection ~~(3)~~ (4), the following definitions apply:

(i) "Aged person" means a person as defined by department rule as aged.

(ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled adult so as to provide for the person's basic needs of food and shelter and to ensure that a specific person is available to meet those basic needs.

(iii) "Disabled adult" means a person who is 18 years of age or older and who is defined by department rule as disabled.

(iv) (A) "Light personal care" means assisting the aged person or disabled adult in accomplishing such personal hygiene tasks as bathing, dressing, and hair grooming and supervision of prescriptive medicine administration.

(B) The term does not include the administration of prescriptive medications.

~~(4)~~(5) "Affected person" means an applicant for a certificate of need, a health care facility located in the geographic area affected by the application, an agency that establishes rates for health care facilities, or a third-party payer who reimburses health care facilities in the area affected by the proposal.

~~(5)~~(6) "Capital expenditure" means:

(a) an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or

(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.

~~(6)~~(7) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

~~(7)~~(8) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.

~~(8)~~(9) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of a disease or assessment of a medical condition.

~~(9)~~(10) "College of American pathologists" means the organization nationally recognized by that name that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

~~(10)~~(11) "Commission on accreditation of rehabilitation facilities" means the organization nationally recognized by that name that surveys rehabilitation facilities upon their requests and grants accreditation status to a rehabilitation facility that it finds meets its standards and requirements.

~~(11)~~(12) "Comparative review" means a joint review of two or more certificate of need applications that are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.

~~(12)~~(13) "Construction" means the physical erection of a health care facility and any stage of the physical erection, including groundbreaking, or remodeling, replacement, or renovation of an existing health care facility.

*(14) "Council on accreditation" means the organization nationally recognized by that name that surveys behavioral treatment programs, chemical dependency treatment programs, residential treatment facilities, and mental health centers upon their requests and grants accreditation status to programs and facilities that it finds meet its standards and requirements.*

~~(13)~~(15) "Critical access hospital" means a facility that is located in a rural area, as defined in 42 U.S.C. 1395ww(d)(2)(D), and that has been designated by the department as a critical access hospital pursuant to 50-5-233.

~~(14)~~(16) "Department" means the department of public health and human services provided for in 2-15-2201.

~~(15)~~(17) "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney diseases and includes freestanding hemodialysis units.

~~(16)~~(18) "Federal acts" means federal statutes for the construction of health care facilities.

~~(17)~~(19) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

~~(18)~~(20) (a) "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. ~~The term does not include offices of private physicians, dentists, or other physical or mental health care workers regulated under Title 37, including chemical dependency counselors.~~ The term includes chemical dependency facilities, critical access hospitals, end-stage renal dialysis facilities, health maintenance organizations, home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities, medical assistance facilities, mental health centers, outpatient centers for primary care, outpatient centers for surgical services, rehabilitation facilities, residential care facilities, and residential treatment facilities.

*(b) The term does not include offices of private physicians, dentists, or other physical or mental health care workers regulated under Title 37, including chemical dependency counselors.*

~~(19) "Health maintenance organization" means a public or private organization that provides or arranges for health care services to enrollees on a prepaid or other financial basis, either directly through provider employees or through contractual or other arrangements with a provider or group of providers.~~

~~(20)~~(21) "Home health agency" means a public agency or private organization or subdivision of the agency or organization that is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

~~(21)~~(22) "Home infusion therapy agency" means a health care facility that provides home infusion therapy services.

~~(22)~~(23) "Home infusion therapy services" means the preparation, administration, or furnishing of parenteral medications or parenteral or enteral nutritional services to an individual in that individual's residence. The services include an educational component for the patient, the patient's caregiver, or the patient's family member.

~~(23)~~(24) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component. The term includes:

(a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that meets all medicare certification regulations for freestanding inpatient hospice facilities; and

(b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that can house three or more hospice patients.

~~(24)~~(25) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation,

and care of injured, disabled, or sick individuals. Services provided may or may not include obstetrical care, emergency care, or any other service allowed by state licensing authority. A hospital has an organized medical staff that is on call and available within 20 minutes, 24 hours a day, 7 days a week, and provides 24-hour nursing care by licensed registered nurses. The term includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tubercular patients, but does not include critical access hospitals.

~~(25)~~(26) "Infirmery" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

- (a) an "infirmery—A" provides outpatient and inpatient care;
- (b) an "infirmery—B" provides outpatient care only.

~~(26)~~(27) "Intermediate developmental disability care" means the provision of nursing care services, health-related services, and social services for persons with developmental disabilities, as defined in 53-20-102, or for individuals with related problems.

~~(27)~~(28) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

~~(28)~~(29) "Joint commission on accreditation of healthcare organizations" means the organization nationally recognized by that name that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.

~~(29)~~(30) (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care, residential care, intermediate nursing care, or intermediate developmental disability care to a total of two or more individuals or that provides personal care.

(b) The term does not include community homes for persons with developmental disabilities licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; youth care facilities, licensed under 52-2-622; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals who do not require institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections.

~~(30)~~(31) "Medical assistance facility" means a facility that meets both of the following:

(a) provides inpatient care to ill or injured individuals before their transportation to a hospital or that provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours unless a longer period is required because transfer to a hospital is precluded because of inclement weather or emergency conditions. The department or its designee may, upon request, waive the 96-hour restriction retroactively and on a case-by-case basis if the individual's attending physician, physician assistant-certified, or nurse practitioner determines that the transfer is medically inappropriate and would jeopardize the health and safety of the individual.

(b) either is located in a county with fewer than six residents a square mile or is located more than 35 road miles from the nearest hospital.



~~(31)~~ (32) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any combination of these services.

~~(32)~~ (33) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

~~(33)~~ (34) "Offer" means the representation by a health care facility that it can provide specific health services.

~~(34)~~ (35) "Outpatient center for primary care" means a facility that provides, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients and that is not an outpatient center for surgical services.

~~(35)~~ (36) "Outpatient center for surgical services" means a clinic, infirmary, or other institution or organization that is specifically designed and operated to provide surgical services to patients not requiring hospitalization and that may include recovery care beds.

~~(36)~~ (37) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

~~(37)~~ (38) "Person" means an individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

~~(38)~~ (39) "Personal care" means the provision of services and care for residents who need some assistance in performing the activities of daily living.

~~(39)~~ (40) "Personal-care facility" means a facility in which personal care is provided for residents in either a category A facility or a category B facility as provided in 50-5-227.

~~(40)~~ (41) "Recovery care bed" means, except as provided in 50-5-235, a bed occupied for less than 24 hours by a patient recovering from surgery or other treatment.

~~(41)~~ (42) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

~~(42)~~ (43) "Resident" means an individual who is in a long-term care facility or in a residential care facility.

~~(43)~~ (44) "Residential care facility" means an adult day-care center, an adult foster care home, a personal-care facility, or a retirement home.

~~(44)~~ (45) "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

~~(45)~~ (46) "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to individuals under 21 years of age.

~~(46)~~ (47) "Retirement home" means a building or buildings in which separate living accommodations are rented or leased to individuals who use those accommodations as their primary residence.

~~(47)~~ (48) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

~~(48)~~ (49) "State health care facilities plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the governor and a statewide health coordinating council appointed by the director of the department.

~~(49)~~ (50) "Swing bed" means a bed approved pursuant to 42 U.S.C. 1395tt to be used to provide either acute care or extended skilled nursing care to a patient."

**Section 2.** Section 50-5-103, MCA, is amended to read:

**"50-5-103. Rules and standards — accreditation by joint commission.** (1) The department shall adopt rules and minimum standards for implementation of parts 1 and 2.

(2) Any facility covered by this chapter ~~must~~ shall comply with the state and federal requirements relating to construction, equipment, and fire and life safety.

(3) The department shall extend a reasonable time for compliance with rules for parts 1 and 2 upon adoption.

(4) Any hospital located in this state that furnishes written evidence required by the department, including the recommendation for future compliance statements to the department of its accreditation granted by the joint commission on accreditation of health care organizations, is eligible for licensure in the state for the accreditation period and may not be subjected to an inspection by the department for purposes of the licensing process. The department may, in addition to its inspection authority in 50-5-116, inspect any licensed health care facility to answer specific complaints made in writing by any person against the facility when the complaints pertain to licensing requirements. Inspection by the department upon a specific complaint made in writing pertaining to licensing requirements is limited to the specific area or condition of the health care facility to which the complaint pertains.

(5) The department may consider as eligible for licensure during the accreditation period any health care facility located in this state, other than a hospital, that furnishes written evidence, including the recommendation for future compliance statements, of its accreditation by the joint commission on accreditation of healthcare organizations. The department may inspect a health care facility considered eligible for licensure under this section to ensure compliance with state licensure standards.

(6) The department may consider as eligible for licensure 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 inspect a rehabilitation facility

considered eligible for licensure under this section to ensure compliance with state licensure standards.

(7) *The department may consider as eligible for licensure during the accreditation period any outpatient center for surgical services that furnishes written evidence, including the recommendation for future compliance statements, of accreditation of its programs by the accreditation association for ambulatory health care. The department may inspect an outpatient center for surgical services considered eligible for licensure under this section to ensure compliance with state licensure standards.*

(8) *The department may consider as eligible for licensure during the accreditation period any behavioral treatment program, chemical dependency treatment program, residential treatment facility, or mental health center that furnishes written evidence, including the recommendation for future compliance statements, of accreditation of its programs by the council on accreditation. The department may inspect a behavioral treatment program, chemical dependency treatment program, residential treatment facility, or mental health center considered eligible for licensure under this section to ensure compliance with state licensure standards."*

**Section 3.** Section 53-6-702, MCA, is amended to read:

**"53-6-702. Definitions.** As used in this part, the following definitions apply:

(1) "Department" means the department of public health and human services.

(2) "Health maintenance organization" means a health maintenance organization as defined in ~~50-5-101~~ 33-31-102.

(3) (a) "Managed care community network" or "network" means an entity, other than a health maintenance organization, that provides or arranges for comprehensive physical or mental health care services under a contract with the department, that is reimbursed by a capitated rate or a fixed monetary amount for a specified time period with a risk of financial loss or a financial incentive to the entity, and that:

(i) contracts for an estimated annual value of \$1 million or more of state and federal medicaid funds; or

(ii) operates statewide or covers 20% or more of the medicaid population.

(b) The term does not include a provider of health care services under a contract with the department on a fee-for-service basis.

(4) "Managed health care entity" or "entity" means a health maintenance organization or a managed care community network.

(5) "Program" means an element of the integrated health care system created by this part."

Approved April 18, 2003

## CHAPTER NO. 402

[SB 110]

AN ACT REVISING CERTAIN OPTIONAL RETIREMENT PLAN MEMBERSHIP PROVISIONS; ALLOWING STATE AND LOCAL ELECTED

OFFICIALS WHO WERE DRAWING A RETIREMENT BENEFIT UNDER THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM OR THE TEACHERS' RETIREMENT SYSTEM AT THE TIME OF THEIR ELECTION TO CERTAIN POSITIONS COVERED BY THE RETIREMENT SYSTEM TO DECIDE NOT TO RETURN TO ACTIVE MEMBERSHIP IN THE SYSTEM AND TO CONTINUE TO RECEIVE THEIR RETIREMENT BENEFITS; AMENDING SECTIONS 19-3-412, 19-3-1106, 19-20-302, AND 19-20-804, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 19-3-412, MCA, is amended to read:

**"19-3-412. Optional membership.** (1) ~~The~~ *Except as provided in subsection (2), the following employees in covered employment may become active members of the retirement system at their option or decline this optional membership by filing an irrevocable, written application with the board within 180 days of commencement of their employment:*

(a) elected officials of the state or local governments who:

(i) are paid on a salary or wage basis rather than on a per diem or other reimbursement basis; or

(ii) *were members receiving retirement benefits under the defined benefit plan or a distribution under the defined contribution plan at the time of their election;*

(b) employees serving in employment that does not cumulatively exceed a total of 960 hours of covered employment with all employers under this chapter in any fiscal year;

(c) employees directly appointed by the governor;

(d) employees working 6 months or less for the legislative branch to perform work related to the legislative session;

(e) the chief administrative officer of any city or county;

(f) employees of county hospitals or rest homes.

(2) (a) Except as provided in subsection (2)(b), employees and officials described in subsections (1)(a) through (1)(f) who are employees or officials but not members on July 1, 1999, have until December 1, 1999, to file an irrevocable, written application with the board.

(b) A legislator may also become a member as of the date prior to December 30, 2000, that the legislator filed an irrevocable written application with the board to become a member and paid the employee share of contributions determined by the board to be required to purchase the legislator's prior service. However, the legislator shall purchase at least 5 years of service credit or, if the legislator has less than 5 years of membership service, service credit equal to all of the legislator's membership service. The legislative branch is responsible for paying the amount determined by the board to be the employer's share of contributions required to purchase a legislator's service under this subsection (2)(b).

(c) (i) *A member who is a local elected official and an active member on [the effective date of this act] and who is working in the member's elected position less than 960 hours in a calendar year may, until January 1, 2004, decline optional membership with respect to the member's elected position.*

(ii) A member who after [the effective date of this act] is elected to a local government position in which the member works less than 960 hours in a calendar year may, within 180 days of being elected, decline optional membership with respect to the member's elected position.

(3) If an employee declines optional membership, the employee shall sign a statement waiving membership and file it with the employer. The employer shall file the statement with the board and retain a copy of the statement. An employee who declines optional membership may not receive membership credit or service credit for the employment for which membership was declined.

(4) An employee who declined optional membership but later becomes a member may purchase service credit for the period of time beginning with the date of employment in which membership was declined to the commencement of membership. Purchase of service pursuant to this subsection must comply with 19-3-505.

(5) Membership in the retirement system is not optional for an employee who is already a member. Upon employment in a position for which membership is optional:

(a) a member who was an active member before the employment remains an active member;

(b) a member who was an inactive member before the employment becomes an active member; and

(c) a member who was a retired member before the employment is subject to part 11 of this chapter.

(6) An employee who declines membership while employed in a position for which membership is optional may not later become a member while still employed in that position. If, after a break in service of 30 days or more, an employee who was a member in an optional membership position is reemployed in the same position or is employed in a different position for which membership is optional, the employee shall again choose or decline membership. However, if the break in service is less than 30 days, an employee who declined membership is bound by the employee's original decision to decline membership.

(7) An employee accepting a position that requires membership shall become a member even if the employee previously declined membership and did not have a 30-day break in service.

(8) If an employee or official fails to file with the board an irrevocable, written application within the time allowed in this section, the employee or official waives membership."

**Section 2.** Section 19-3-1106, MCA, is amended to read:

**"19-3-1106. Limited reemployment — reduction of service retirement benefit upon exceeding limits — ~~exception exceptions~~.** (1) A retired member under 65 years of age who is receiving a service 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 retiree 65 years of age or older 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 benefits, 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 covered service beyond the applicable limitation during that calendar year.

(3) A retiree returning to employment covered by the retirement system and the returning employee's employer 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 month after retirement.

(4) A retiree returning to employment covered by the retirement system may elect to return to active membership at any time during this period of covered employment.

~~(5) A retired member 70 1/2 years of age or older~~ *The following members who return* return to employment covered by the retirement system ~~is~~ are not subject to the hour or earnings limitations in subsections (1) and (2) or the reporting requirements in subsection (3):

(a) *a retired member 70 1/2 years of age or older; or*

(b) *an elected official in a covered position who declines optional membership as provided in 19-3-412."*

**Section 3.** Section 19-20-302, MCA, is amended to read:

**"19-20-302. Active membership.** (1) Unless otherwise provided by this chapter, the following persons 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 optional retirement program under Title 19, chapter 21;

(c) a person employed as a speech-language pathologist, school nurse, or school psychologist or in a teaching capacity by the office of the superintendent of public instruction, the office of a county superintendent, a special education cooperative, a public institution of the state of Montana, the Montana state school for the deaf and blind, or a school district;

(d) a person who is an administrative officer or a member of the instructional staff of the board of public education; ~~and~~

(e) the superintendent of public instruction or a person employed in an instructional services capacity by the office of public instruction; *and*

(f) *a person elected to the office of county superintendent of schools.*

(2) ~~A person~~ *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 and may, within 30 days of taking office, elect 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) A person employed as a substitute teacher on July 1, 1999, who has not elected to become a member by that date shall file an irrevocable written election as required by subsection (4)(a)(i) on the first day of employment as a substitute in the next school year after July 1, 1999.

(d) A person employed as a part-time teacher's aide on July 1, 2001, who is not a member of the retirement system shall file an irrevocable written election as required by subsection (4)(a)(i) on the first day of employment as a part-time teacher's aide after July 1, 2001.

(e) 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).

(f) 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 19-20-804.

(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."

**Section 4.** Section 19-20-804, MCA, is amended to read:

**“19-20-804. Allowance for service retirement.** (1) Upon termination, a member who has attained normal retirement age must receive a retirement allowance equal to one-sixtieth of the member’s average final compensation, as limited by 19-20-715, multiplied by the sum of the number of years of creditable service and service transferred under 19-20-409.

(2) Except as provided in subsection (4), a retired member may be employed part-time in a position specified in 19-20-302 and may earn, without loss of retirement benefits, an amount not to exceed the greater of:

(a) one-third of the sum of the member’s average final compensation; or

(b) one-third of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board.

(3) On July 1 of each year following the member’s retirement effective date, the maximum earning amount allowed under subsection (2)(a) is increased by an amount equal to the consumer price index increase for urban wage earners compiled by the bureau of labor statistics of the United States department of labor or its successor agency in the preceding year.

(4) (a) Except as provided in subsection (5), the retirement benefit of a retired member employed in a full-time position or earning more than allowed by subsection (2) must be canceled beginning in the month in which the retired member returns to full-time employment or earns more than allowed.

(b) The retirement benefits of a retired member who was employed in a full-time position or who exceeded the amount that the retired member was eligible to earn under subsection (2) and who was reemployed for less than 1 year must, upon termination of employment, be reinstated beginning in the later of either the month following termination or July 1 of the school year following the date on which the retired member was reemployed. The reinstated retirement benefit is the amount that the retired member would have been entitled to receive had the retired member not returned to employment.

(c) Upon retirement after cancellation of a retired member’s benefit pursuant to subsection (4)(a), a retired member who is reemployed as an active member for a minimum of 1 year of full-time service must receive a recalculated benefit. The recalculated benefit is based on the service credit accumulated at the time of the member’s previous retirement plus any service credit accumulated subsequent to reemployment.

(d) *A retired member elected to the office of county superintendent or appointed to complete the term of an elected county superintendent and who elects, pursuant to 19-20-302(2), to not become an active member is exempt from the employment and earnings limits specified in subsection (2).*

(5) If an early-retired member under 19-20-802 is reemployed with the same employer within 30 days from the member’s effective date of retirement or if the early-retired member is guaranteed reemployment with the same employer, the member must be considered to have continued in the status of an active member and not to have separated from service. Any retirement allowance payments received by the member must be repaid to the system, together with interest, at the actuarially assumed rate, and the retirement allowance must be terminated.”

**Section 5. Effective date.** [This act] is effective on passage and approval.

Approved April 17, 2003



**CHAPTER NO. 403**

[SB 113]

AN ACT REVISING LAWS REGARDING HOSPITALS AND RELATED FACILITIES; DEFINING "INTERMEDIATE CARE FACILITY FOR THE DEVELOPMENTALLY DISABLED"; PROVIDING FOR THE LICENSURE OF INTERMEDIATE CARE FACILITIES FOR THE DEVELOPMENTALLY DISABLED; AUTHORIZING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ADOPT RULES FOR LICENSURE OF INTERMEDIATE CARE FACILITIES FOR THE DEVELOPMENTALLY DISABLED; ELIMINATING A HEALTH MAINTENANCE ORGANIZATION FROM THE DEFINITION OF "HEALTH CARE FACILITY"; AMENDING SECTIONS 50-5-101, 53-6-165, 53-6-171, AND 53-6-702, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 50-5-101, MCA, is amended to read:

**"50-5-101. Definitions.** As used in parts 1 through 3 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

- (1) "Accreditation" means a designation of approval.
- (2) "Adult day-care center" means a facility, freestanding or connected to another health care facility, that provides adults, on a regularly scheduled basis, with the care necessary to meet the needs of daily living but that does not provide overnight care.
- (3) (a) "Adult foster care home" means a private home or other facility that offers, except as provided in 50-5-216, only light personal care or custodial care to four or fewer disabled adults or aged persons who are not related to the owner or manager of the home by blood, marriage, or adoption or who are not under the full guardianship of the owner or manager.
  - (b) As used in this subsection (3), the following definitions apply:
    - (i) "Aged person" means a person as defined by department rule as aged.
    - (ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled adult so as to provide for the person's basic needs of food and shelter and to ensure that a specific person is available to meet those basic needs.
    - (iii) "Disabled adult" means a person who is 18 years of age or older and who is defined by department rule as disabled.
    - (iv) (A) "Light personal care" means assisting the aged person or disabled adult in accomplishing such personal hygiene tasks as bathing, dressing, and hair grooming and supervision of prescriptive medicine administration.
      - (B) The term does not include the administration of prescriptive medications.
- (4) "Affected person" means an applicant for a certificate of need, a health care facility located in the geographic area affected by the application, an agency that establishes rates for health care facilities, or a third-party payer who reimburses health care facilities in the area affected by the proposal.
- (5) "Capital expenditure" means:

(a) an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or

(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.

(6) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

(7) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.

(8) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of a disease or assessment of a medical condition.

(9) "College of American pathologists" means the organization nationally recognized by that name that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

(10) "Commission on accreditation of rehabilitation facilities" means the organization nationally recognized by that name that surveys rehabilitation facilities upon their requests and grants accreditation status to a rehabilitation facility that it finds meets its standards and requirements.

(11) "Comparative review" means a joint review of two or more certificate of need applications that are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.

(12) "Construction" means the physical erection of a health care facility and any stage of the physical erection, including groundbreaking, or remodeling, replacement, or renovation of an existing health care facility.

(13) "Critical access hospital" means a facility that is located in a rural area, as defined in 42 U.S.C. 1395ww(d)(2)(D), and that has been designated by the department as a critical access hospital pursuant to 50-5-233.

(14) "Department" means the department of public health and human services provided for in 2-15-2201.

(15) "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney diseases and includes freestanding hemodialysis units.

(16) "Federal acts" means federal statutes for the construction of health care facilities.

(17) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(18) (a) "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive

care to any individual. ~~The term does not include offices of private physicians, dentists, or other physical or mental health care workers regulated under Title 37, including chemical dependency counselors.~~ The term includes chemical dependency facilities, critical access hospitals, end-stage renal dialysis facilities, ~~health maintenance organizations,~~ home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities, *intermediate care facilities for the developmentally disabled*, medical assistance facilities, mental health centers, outpatient centers for primary care, outpatient centers for surgical services, rehabilitation facilities, residential care facilities, and residential treatment facilities.

*(b) The term does not include offices of private physicians, dentists, or other physical or mental health care workers regulated under Title 37, including chemical dependency counselors.*

~~(19) "Health maintenance organization" means a public or private organization that provides or arranges for health care services to enrollees on a prepaid or other financial basis, either directly through provider employees or through contractual or other arrangements with a provider or group of providers.~~

~~(20)~~(19) "Home health agency" means a public agency or private organization or subdivision of the agency or organization that is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

~~(21)~~(20) "Home infusion therapy agency" means a health care facility that provides home infusion therapy services.

~~(22)~~(21) "Home infusion therapy services" means the preparation, administration, or furnishing of parenteral medications or parenteral or enteral nutritional services to an individual in that individual's residence. The services include an educational component for the patient, the patient's caregiver, or the patient's family member.

~~(23)~~(22) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component. The term includes:

(a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that meets all medicare certification regulations for freestanding inpatient hospice facilities; and

(b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that can house three or more hospice patients.

~~(24)~~(23) (a) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals. Services provided may or may not include obstetrical care, emergency care, or any other service allowed by state licensing authority. A hospital has an organized medical staff that is on call and available within 20 minutes, 24 hours a day, 7 days a week, and provides 24-hour nursing care by licensed registered nurses. The term includes hospitals specializing in providing health services for

psychiatric, ~~mentally retarded~~ *developmentally disabled*, and tubercular patients.

(b) ~~but does~~ *The term does not include critical access hospitals.*

~~(25)~~(24) "Infirmery" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmery—A" provides outpatient and inpatient care;

(b) an "infirmery—B" provides outpatient care only.

(25) (a) "*Intermediate care facility for the developmentally disabled*" means a facility or part of a facility that provides intermediate developmental disability care for two or more persons.

(b) *The term does not include community homes for persons with developmental disabilities that are licensed under 53-20-305 or community homes for persons with severe disabilities that are licensed under 52-4-203.*

(26) "Intermediate developmental disability care" means the provision of *intermediate* nursing care services, health-related services, and social services for persons with a developmental ~~disabilities~~ *disability*, as defined in 53-20-102, or for ~~individuals~~ *persons* with related problems.

(27) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(28) "Joint commission on accreditation of healthcare organizations" means the organization nationally recognized by that name that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.

(29) (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care, residential care, intermediate nursing care, or intermediate developmental disability care to a total of two or more individuals or that provides personal care.

(b) The term does not include community homes for persons with developmental disabilities licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; youth care facilities, licensed under 52-2-622; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals who do not require institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections.

(30) "Medical assistance facility" means a facility that meets both of the following:

(a) provides inpatient care to ill or injured individuals before their transportation to a hospital or that provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours unless a longer period is required because transfer to a hospital is precluded because of inclement weather or emergency conditions. The department or its designee may, upon request, waive the 96-hour restriction retroactively and on a case-by-case basis if the individual's attending physician, physician assistant-certified, or nurse practitioner determines that the transfer is medically inappropriate and would jeopardize the health and safety of the individual.

(b) either is located in a county with fewer than six residents a square mile or is located more than 35 road miles from the nearest hospital.

(31) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any combination of these services.

(32) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

(33) "Offer" means the representation by a health care facility that it can provide specific health services.

(34) "Outpatient center for primary care" means a facility that provides, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients and that is not an outpatient center for surgical services.

(35) "Outpatient center for surgical services" means a clinic, infirmary, or other institution or organization that is specifically designed and operated to provide surgical services to patients not requiring hospitalization and that may include recovery care beds.

(36) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

(37) "Person" means an individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

(38) "Personal care" means the provision of services and care for residents who need some assistance in performing the activities of daily living.

(39) "Personal-care facility" means a facility in which personal care is provided for residents in either a category A facility or a category B facility as provided in 50-5-227.

(40) "Recovery care bed" means, except as provided in 50-5-235, a bed occupied for less than 24 hours by a patient recovering from surgery or other treatment.

(41) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

(42) "Resident" means an individual who is in a long-term care facility or in a residential care facility.

(43) "Residential care facility" means an adult day-care center, an adult foster care home, a personal-care facility, or a retirement home.

(44) "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

(45) "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to individuals under 21 years of age.

(46) "Retirement home" means a building or buildings in which separate living accommodations are rented or leased to individuals who use those accommodations as their primary residence.

(47) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(48) "State health care facilities plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the governor and a statewide health coordinating council appointed by the director of the department.

(49) "Swing bed" means a bed approved pursuant to 42 U.S.C. 1395tt to be used to provide either acute care or extended skilled nursing care to a patient."

**Section 2.** Section 53-6-165, MCA, is amended to read:

**"53-6-165. Definitions.** As used in this part, unless expressly provided otherwise, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) "Recipient" means an individual who has been determined by a medicaid agency to be eligible for medicaid benefits, whether or not the individual has actually received a benefit, or an individual who has received benefits, whether or not that person has been determined to be eligible.

(3) "Recoverable medical assistance" means a payment pursuant to this part, including but not limited to a payment made for items or services provided to and insurance premiums, deductibles, and coinsurance paid on behalf of a recipient who:

(a) during the recipient's lifetime, was an inpatient in a nursing facility, intermediate care facility for the ~~mentally-retarded~~ *developmentally disabled*, or institution for mental disease and, with respect to that institutionalization, the department determined under 53-6-171 that the person was not reasonably expected to be discharged and return home; or

(b) was at least 55 years of age or younger if allowed by 42 U.S.C. 1396p, as may be amended, when the item or service was provided or when the insurance premium, deductible, or coinsurance was paid.

(4) "Recovery" means legal action brought for the payment or repayment of recoverable medical assistance or amounts of money paid for other purposes."

**Section 3.** Section 53-6-171, MCA, is amended to read:

**"53-6-171. Department lien upon real property of certain medicaid recipients — conditions.** (1) Following notice and opportunity for hearing as provided in 53-6-172, the department shall impose a lien upon the real property, including the home, of an institutionalized recipient of recoverable medical assistance to secure the assets of the recipient for recovery of medical assistance paid on behalf of the recipient prior to, on, or after the imposition of the lien if:

(a) the recipient has been admitted to a nursing facility, an intermediate care facility for the ~~mentally-retarded~~ *developmentally disabled*, or an institution for mental disease;

(b) the property upon which a lien is being imposed is the recipient's home and the home is not lawfully resided in by:

- (i) the recipient's spouse;
- (ii) the recipient's child who is under 21 years of age, blind, or permanently and totally disabled; or
- (iii) the recipient's sibling who was residing in the recipient's home for a period of at least 18 months immediately prior to the recipient's institutionalization; and

(c) the recipient has been determined by the department, pursuant to subsection (2), to be permanently institutionalized.

(2) A recipient is permanently institutionalized for purposes of subsection (1)(c) if the department determines that the recipient cannot reasonably be expected to be discharged from the facility and to return home. There is a rebuttable presumption that the recipient cannot reasonably be expected to be discharged from the facility and return home if the recipient or a representative of the recipient declares that there is no intent to return home or if the recipient has been institutionalized for 6 months or longer without a discharge plan. The recipient's institutionalization for a period of 6 months or longer without a discharge plan does not give rise to the presumption if the facility was required by law to adopt a discharge plan but failed to do so. A recipient or a recipient's representative who alleges that there is a reasonable expectation of discharge from the facility and a return home has the burden of demonstrating the reasonable expectation. The reasonable expectation must be established based upon medical evidence and medical opinion. A declaration by the recipient or a recipient's representative that the recipient intends to be discharged from the facility and to return home is not alone sufficient to establish that there is a reasonable expectation of discharge from the facility and a return home.

(3) For purposes of this section, real property of a recipient includes any interest in real property that may be subject to a judgment lien."

**Section 4.** Section 53-6-702, MCA, is amended to read:

**"53-6-702. Definitions.** As used in this part, the following definitions apply:

(1) "Department" means the department of public health and human services.

(2) "Health maintenance organization" means a ~~health maintenance organization as defined in 50-5-101.~~ *health maintenance organization as defined in 33-31-102.*

(3) (a) "Managed care community network" or "network" means an entity, other than a health maintenance organization, that provides or arranges for comprehensive physical or mental health care services under a contract with the department, that is reimbursed by a capitated rate or a fixed monetary amount for a specified time period with a risk of financial loss or a financial incentive to the entity, and that:

(i) contracts for an estimated annual value of \$1 million or more of state and federal medicaid funds; or

(ii) operates statewide or covers 20% or more of the medicaid population.

(b) The term does not include a provider of health care services under a contract with the department on a fee-for-service basis.

(4) "Managed health care entity" or "entity" means a health maintenance organization or a managed care community network.

(5) "Program" means an element of the integrated health care system created by this part."

**Section 5. Licensure of intermediate care facility for developmentally disabled — rulemaking.** (1) The department shall adopt procedures for licensing intermediate care facilities for the developmentally disabled. A person may not operate an intermediate care facility for the developmentally disabled without a license. The application for a license must include:

- (a) the name and address of the applicant;
- (b) the location of the intermediate care facility for the developmentally disabled;
- (c) the name of the person or persons who will manage or supervise the intermediate care facility for the developmentally disabled;
- (d) the number of persons with developmental disabilities who will receive care at the intermediate care facility for the developmentally disabled; and
- (e) other information required by the department by rule.

(2) The department may adopt rules establishing standards for licensing intermediate care facilities for the developmentally disabled. The standards must address the protection of residents' rights, individual resident treatment and habilitation needs, staffing requirements, including qualifications, resident behavior and facility practices, health care services, physical environment, dietetic services, and recordkeeping.

**Section 6. Codification instruction.** [Section 5] is intended to be codified as an integral part of Title 50, chapter 5, part 2, and the provisions of Title 50, chapter 5, part 2, apply to [section 5].

**Section 7. Effective date.** [This act] is effective July 1, 2003.

Approved April 18, 2003

## CHAPTER NO. 404

[SB 137]

AN ACT GENERALLY REVISING THE METHOD OF LEASING STATE TRUST LAND; AUTHORIZING THE LEASING OF STATE TRUST LAND FOR COMMERCIAL PURPOSES; ESTABLISHING PROCEDURES FOR COMMERCIAL LEASES; AUTHORIZING THE BOARD OF LAND COMMISSIONERS TO ADOPT RULES; REVISING CONSIDERATION FOR EASEMENTS; AMENDING SECTIONS 77-1-204, 77-2-106, 77-6-109, AND 77-6-503, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

**Section 1. Declaration of policy and purpose.** (1) Pursuant to Article X of the Montana constitution, the legislature declares that it is the policy of the state that state trust land is to be treated as a sacred trust and is subject to fiduciary principles in its management. It is the intent of the legislature that



state trust land be managed in the best financial interest of current and future individual beneficiaries for whom this land is managed and held.

(2) A purpose of this chapter is to implement Article X of the Montana constitution. To fulfill its commitment to the management of state trust land in the best long-term financial interests of the beneficiaries, the Montana legislature finds that the state can prudently maximize the long-term revenue accruing to the beneficiaries by issuing commercial leases on land where the chief value exists in its use for commercial purposes.

**Section 2. Definitions.** As used in [sections 1 through 12], unless the context requires otherwise, the following definitions apply:

(1) "Cancellation" means the cessation of a lessee's possessory rights and privileges under a lease due to the lessee's breach of some term of the lease, applicable statutes, or applicable administrative rules.

(2) "Commercial lease" means a contract to use state trust land for a commercial purpose.

(3) (a) "Commercial purpose" means an industrial enterprise, retail sales outlet, business and professional office building, warehouse, motel, hotel, hospitality enterprise, commercial or concentrated recreational use, multifamily residential development, and other similar business.

(b) The term does not include the following uses:

(i) agriculture;

(ii) grazing;

(iii) exploration or development of oil and gas, mineral, and geothermal resources;

(iv) single-family residences, home sites, and cabin sites; and

(v) utility rights-of-way.

(4) "Termination" means the automatic completion or ending of the term of a contract according to its provisions. Upon termination, the lessee ceases to have any possessory rights or privileges under a lease.

**Section 3. Authority of board to determine development.** The board shall determine how the development of state trust land for commercial purposes is to proceed before any state trust land is offered for lease. In making this determination, the board may consider the following factors:

(1) the purpose of any development or development plan;

(2) the allocation and location of specific uses of the land, including residential, commercial, industrial, recreational, or other appropriate uses;

(3) the densities and intensities of designated land uses;

(4) the timing and rate of development; and

(5) the timely delivery of adequate facilities and services, including water, wastewater collection and treatment systems, parks and public recreational facilities, drainage facilities, school sites, roads, and transportation facilities.

**Section 4. Commercial leasing authorized.** (1) State trust land may be leased for a term not to exceed 99 years for commercial purposes to the highest and best bidder responding to a department request for proposals for commercial uses of a specified tract.

(2) The board may enter into contracts with lessees of state trust land for commercial purposes upon terms and conditions that the board may reasonably determine to be in the best interests of the beneficiary.

(3) A request for proposals for the commercial leasing of state trust land must reserve the board's right to reject any and all bids and the right to reoffer the tract for lease if the bids received are not acceptable to the board.

**Section 5. Rental provisions for commercial leasing — payments and credits — administration — lease options.** (1) The first year's annual rental payment for state trust land leased for commercial purposes must be paid by cashier's check, and payment is due upon execution of the lease. The department may require the lessee of state trust land for commercial purposes to pay the department's cost of the request for proposals process, including publication and other reasonable expenses. Failure to pay the first year's rental at the time of lease execution must result in the cancellation of the lease and forfeiture of all money paid. In the event of cancellation or in the event that the successful proposer is offered and does not accept the lease, the board may enter into negotiations with other persons who submitted a proposal for commercial purposes in response to the department request for proposals on that tract.

(2) The board shall specify in any commercial lease an annual rental equal to the full market rental value of the land. The annual rent may not be less than the product of the appraised value of the land multiplied by a rate that is 2 percentage points a year less than the rate of return of the unified investment program administered by the board of investments pursuant to 17-6-201. The rate of return from the unified investment program used in this subsection must be determined no less than 30 days prior to the execution of the competitive bid. A commercial lease may include a rental adjustment formula established by the board that periodically adjusts the annual rent provided for in the lease at frequencies specified in the lease. The board may allow a credit against the annual rent due for payments made by the lessee on behalf of the state of Montana for construction of structures and improvements, special improvement district assessments, annexation fees, or other city or county fees attributable to the state's property interest in land leased for commercial purposes. The board may accept as lawful consideration in-kind payments of services or materials equal to the full market value of the rent calculated to be owed on any commercial lease. A lease issued under [sections 1 through 12] may include an amortization schedule to be used to determine the value to the lessee of improvements when the lease is terminated.

(3) The department may use up to 10% of the annual rent received from a commercial lease to contract with realtors, property managers, surveyors, legal counsel, or lease administrators to administer the commercial lease, either singly or in common with other leases, or to provide assistance to the department in the administration of commercial leases.

(4) In anticipation of entering into a commercial lease, the board may issue an option to lease at a rental rate that the board determines to be appropriate. An option to lease may not exceed a term of 2 years. An option to lease may not be construed to grant a right of immediate possession or control over the land but may only preserve the optionholder's exclusive right to obtain a commercial lease on the land in the future.

**Section 6. Requirements for commercial lease — improvements.** (1) The board shall require, subject to the board's supervision and jurisdiction, that the lessee be solely responsible for the expense of maintenance and operation of

the enterprise, business, or venture and all improvements made and constructed in support of any commercial purpose during the term of the lease. This requirement does not apply to the installation and construction by the lessee of infrastructure and improvements, such as public roads, parks, sewers, or utilities, if they were required by a local government as a condition of development.

(2) Upon expiration of the lease, the title to all permanent improvements and fixtures located on the leased property and used in the operation and maintenance of the enterprise vests in the state. The lease must describe in detail the manner and subject matter of the transfer to the state.

**Section 7. Qualifications for commercial lessees — bonds.** (1) Before accepting any offer for a commercial lease, the board shall establish, to its satisfaction, the financial capability of the person seeking the commercial lease and the legal authority of the person to conduct business in the state. Prior to executing a commercial lease, the board may require the posting of bonds, sureties, guarantees, or a letter of credit sufficient to ensure that the commercial purposes will be conducted as proposed with no harm to the financial interests of the beneficiaries.

(2) All commercial leases of which the commercial purpose includes the use of a hazardous substance as defined in 75-10-602 must be bonded to ensure a degree of cleanup of the hazardous substance that ensures protection of public health, safety, and welfare and of the environment in a manner that protects the long-term financial interest of the beneficiaries.

**Section 8. Land use license issuance following reclassification.** Following cancellation of a preexisting lease due to a reclassification pursuant to 77-1-401 through 77-1-403, the department may issue a land use license for the commercial lands reclassified for a term the department considers necessary to protect the income to the trust and to protect the state.

**Section 9. Cancellation or termination of commercial lease.** A commercial lease may be canceled at the option of the board or its designated representative for any violation of a lease provision. Upon cancellation or termination of a lease, the department may seek a new lessee in accordance with [sections 1 through 12]. If the costs of the commercial development have not been recovered by the state at the time of cancellation or termination, a subsequent lessee under this section shall reimburse the state for development costs, assessments, or fees only to the extent that the proportionate part of the costs, assessments, and fees to the state for obtaining the development have not been recovered.

**Section 10. Encumbrance on leased land.** (1) An encumbrance may not be placed upon the state's interest in land leased for commercial purposes.

(2) A commercial lease of state trust land may contain provisions that will permit the encumbering of the lessee's interest in the lease by mortgage or deed of trust.

**Section 11. Notice and payment of assessments.** (1) The lessee of a commercial lease on state trust land shall furnish to the department:

(a) officially certified descriptions of all state trust land included within the boundaries of a city or county improvement district that is the subject of the commercial lease; and

(b) a description and listing of the amount of assessments and charges of every character made against the leasehold interest of the lessee and the leasehold interest of the state, as soon as the assessments or charges are levied.

(2) A promise by the lessee to make timely payment of all assessment charges and an acknowledgment of the assessment must be inserted in any lease for state trust land.

(3) If assessments have been levied against any state trust land prior to commercial lease, the board shall require that all unpaid installments on assessments be paid to the improvement district before executing a lease.

(4) If an installment on an assessment or charge against the leasehold interest of the lessee of land subject to a commercial lease is not paid when due, the nonpayment constitutes a breach of the lease.

**Section 12. Rulemaking.** The board may adopt rules to:

(1) establish procedures for the issuance of requests for proposals for commercial purposes and the commercial leasing of state trust land;

(2) prescribe the form and content of commercial leases; and

(3) develop any other procedures necessary to fulfill the purposes of [sections 1 through 12] or to implement the commercial leasing of state trust land.

**Section 13.** Section 77-1-204, MCA, is amended to read:

**“77-1-204. Power to sell, lease, or exchange certain state trust lands.**

(1) The board is authorized to lease state *trust* lands for uses other than agriculture, grazing, timber harvest, or mineral production under ~~such~~ terms and conditions ~~which~~ that best ~~meet~~ fulfill the duties of the board as specified in 77-1-202 and 77-1-203. The lease period for ~~such~~ these leases, except for power and school site leases, may not be for longer than ~~40~~ 99 years.

(2) The board ~~shall have full power and authority to~~ may sell, exchange, or lease lands under its jurisdiction by virtue of 77-1-214 when, in ~~its~~ the board's judgment, it is advantageous to the state to do so in the highest orderly development and management of state ~~forests and state parks~~ trust land. ~~Said~~ The sale, lease, or exchange ~~shall~~ may not be contrary to the terms of any contract ~~which it~~ that the board has entered into.”

**Section 14.** Section 77-2-106, MCA, is amended to read:

**“77-2-106. Charge for granting of easement — in-kind payments for easements.** (1) The board shall charge and collect the full market value of the estate or interest disposed of through the granting of any easement and also fix, charge, and collect the amount of the actual damages resulting to the remaining land ~~or lands~~ from the granting of an easement as nearly as the damages can be ascertained.

(2) *The board may accept, as lawful consideration, in-kind payments of services and materials equal to the full market value of any easement upon state trust land.*”

**Section 15.** Section 77-6-109, MCA, is amended to read:

**“77-6-109. Duration of agricultural or grazing lease.** Except as provided in 77-6-116, a lease for agricultural or grazing lands may not be for a period other than 5 or 10 years. ~~Leases for city lots, town lots, and lands valuable for commercial development may not exceed 40 years.~~”

**Section 16.** Section 77-6-503, MCA, is amended to read:

**“77-6-503. Leases of city lots, town lots, and commercial property.** ~~As to~~ *The fair rental value of state-owned town lots, city lots, and land valuable for commercial development owned by the state, the fair rental value thereof shall must be determined from time to time by the department with the approval of the board, and a record must be made of the values thereof, and such State-owned town lots, city lots, or city property or land valuable for commercial development may be leased at its the current appraised rental value for terms not to exceed 40 99 years.*”

**Section 17. Codification instruction.** [Sections 1 through 12] are intended to be codified as an integral part of Title 77, chapter 1, and the provisions of Title 77, chapter 1, apply to [sections 1 through 12].

**Section 18. 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 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. Effective date.** [This act] is effective July 1, 2003.

**Section 21. Applicability.** [This act] applies to all leases for commercial purposes made or renewed on or after July 1, 2003.

Approved April 17, 2003

## CHAPTER NO. 405

[SB 146]

AN ACT ELIMINATING UNUSED STATE GRANT AND LOAN PROGRAMS; ELIMINATING THE ENERGY CONSERVATION IN AGRICULTURE GRANT PROGRAM, THE ALTERNATIVE ENERGY AND ENERGY CONSERVATION RESEARCH DEVELOPMENT AND DEMONSTRATION PROGRAM, THE SOLID WASTE MANAGEMENT GRANT AND LOAN PROGRAM, AND THE STATE-OWNED BUILDING ENERGY RETROFITTING GRANT AND LOAN PROGRAM; AMENDING SECTIONS 15-6-225, 15-24-1401, 15-31-124, 15-32-402, 17-6-403, 30-16-103, 75-10-103, 75-10-104, 75-10-105, 75-10-106, 80-12-201, 90-5-101, AND 90-8-104, MCA; AND REPEALING SECTIONS 75-10-121, 75-10-122, 75-10-123, 75-10-124, 75-10-125, 90-2-140, 90-2-141, 90-4-101, 90-4-102, 90-4-103, 90-4-104, 90-4-105, 90-4-106, 90-4-109, 90-4-111, AND 90-4-112, MCA.

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

**Section 1.** Section 15-6-225, MCA, is amended to read:

**“15-6-225. Energy equipment exemption.** (1) (a) Except as provided in subsection (1)(b), the machinery and equipment used in qualifying generation facilities built and operated after July 1, 2001, are exempt from taxation.

(b) A generation facility that has a nameplate capacity of less than 1 megawatt of electrical energy is exempt from taxation for 5 years after the generation of electricity begins.

(c) *To qualify for the exemption under this section, the generation facilities must be powered by an alternative renewable energy source.*

(2) ~~(a)~~ For the purposes of this section:

(a) *“alternative renewable energy source” means a form of energy or matter that is capable of being converted into forms of energy useful to mankind, including electricity, and the technology necessary to make this conversion, when the source is not exhaustible in terms of this planet and when the source or technology is not in general commercial use. The term includes but is not limited to:*

- (i) *solar energy;*
- (ii) *wind energy;*
- (iii) *geothermal energy;*
- (iv) *conversion of biomass;*
- (v) *fuel cells that do not require hydrocarbon fuel;*
- (vi) *small hydroelectric generators producing less than 1 megawatt; or*
- (vii) *methane from solid waste.*

(b) *“generation facility” includes any combination of a generator or generators, associated prime movers, and other associated machinery and equipment that are normally operated together to produce electric power, but does not include the owner’s business improvements and personal property.*

~~(b) To qualify for the exemption under this section, the generation facilities must be powered by an alternative renewable energy source, as defined in 90-4-102.~~

**Section 2.** Section 15-24-1401, MCA, is amended to read:

**“15-24-1401. Definitions.** The following definitions apply to 15-24-1402 unless the context requires otherwise:

(1) *“Expansion” means that the industry has added after July 1, 1987, at least \$50,000 worth of qualifying improvements or modernized processes to its property within the same jurisdiction either in the first tax year in which the benefits provided for in 15-24-1402 are to be received or in the preceding tax year.*

(2) *“Industry” includes but is not limited to a firm that:*

(a) *engages in the mechanical or chemical transformation of materials or substances into products in the manner defined as manufacturing in the North American Industry Classification System Manual prepared by the United States office of management and budget;*

(b) *engages in the extraction or harvesting of minerals, ore, or forestry products;*

(c) *engages in the processing of Montana raw materials such as minerals, ore, agricultural products, and forestry products;*

(d) *engages in the transportation, warehousing, or distribution of commercial products or materials if 50% or more of the industry’s gross sales or receipts are earned from outside the state;*

(e) *earns 50% or more of its annual gross income from out-of-state sales; or*

(f) engages in the production of electrical energy in an amount of 1 megawatt or more by means of an alternative renewable energy source as defined in ~~90-4-102~~ 15-6-225.

(3) "New" means that the firm is new to the jurisdiction approving the resolution provided for in 15-24-1402(2) and has invested after July 1, 1987, at least \$125,000 worth of qualifying improvements or modernized processes in the jurisdiction either in the first tax year in which the benefits provided for in 15-24-1402 are to be received or in the preceding tax year. New industry does not include property treated as new industrial property under 15-6-135.

(4) "Qualifying" means meeting all the terms, conditions, and requirements for a reduction in taxable value under 15-24-1402 and this section."

**Section 3.** Section 15-31-124, MCA, is amended to read:

**"15-31-124. New or expanded industry credit — definitions.** As used in 15-31-124 through 15-31-127, the following definitions apply:

(1) "Department" means the department of revenue.

(2) "Expanding" means to expand or diversify a present operation to increase total full-time jobs by 30% or more.

(3) "Manufacturing" means:

(a) the process of mechanical or chemical transformation of materials or substances into new products, as described in the North American Industry Classification System Manual prepared by the United States office of management and budget; or

(b) the production of energy by means of an alternative renewable energy source as defined in ~~90-4-102~~ 15-6-225.

(4) (a) "New corporation" means a corporation engaging in manufacturing for the first time in this state. A new corporation includes:

(i) a manufacturing corporation existing outside of Montana that enters into manufacturing in the state;

(ii) a nonmanufacturing corporation within the state that enters into manufacturing in the state; or

(iii) a corporation newly formed in Montana and entering into manufacturing operations in the state.

(b) A new corporation does not include:

(i) a corporation reorganized from a previously existing corporation that has been engaged in manufacturing in this state; or

(ii) a corporation created as a parent, subsidiary, or affiliate of an existing corporation that has been engaged in manufacturing in this state of which 20% or more of the ownership is held by the corporation or by the stockholders of the corporation."

**Section 4.** Section 15-32-402, MCA, is amended to read:

**"15-32-402. Commercial or net metering system investment credit — alternative energy systems.** (1) An individual, corporation, partnership, or small business corporation as defined in 15-30-1101 that makes an investment of \$5,000 or more in certain depreciable property qualifying under section ~~38~~ 48(a) of the Internal Revenue Code of ~~1954~~ 1986, as amended, 26 U.S.C. 48(a), for a commercial system or a net metering system, as defined in 69-8-103, that is located in Montana and that generates energy by means of an alternative

renewable energy source, as defined in ~~90-4-102~~ 15-6-225, is entitled to a tax credit against taxes imposed by 15-30-103 or 15-31-121 in an amount equal to 35% of the eligible costs, to be taken as a credit only against taxes due as a consequence of taxable or net income produced by one of the following:

(a) manufacturing plants located in Montana that produce alternative energy generating equipment;

(b) a new business facility or the expanded portion of an existing business facility for which the alternative energy generating equipment supplies, on a direct contract sales basis, the basic energy needed; or

(c) the alternative energy generating equipment in which the investment for which a credit is being claimed was made.

(2) For purposes of determining the amount of the tax credit that may be claimed under subsection (1), eligible costs include only those expenditures that qualify under section ~~38~~ 48(a) of the Internal Revenue Code of ~~1954~~ 1986, as amended, 26 U.S.C. 48(a), and that are associated with the purchase, installation, or upgrading of:

(a) generating equipment;

(b) safety devices and storage components;

(c) transmission lines necessary to connect with existing transmission facilities; and

(d) transmission lines necessary to connect directly to the purchaser of the electricity when no other transmission facilities are available.

(3) Eligible costs under subsection (2) must be reduced by the amount of any grants provided by the state or federal government for the system."

**Section 5.** Section 17-6-403, MCA, is amended to read:

**"17-6-403. Definitions.** As used in this part, the following definitions apply:

(1) "Certified community lead organization" means an organization that has sponsored community certification under the certified communities program of the department.

(2) "Certified microbusiness development corporation" means a microbusiness development corporation certified pursuant to 17-6-408.

(3) "Council" means the microbusiness advisory council established in 17-6-411.

(4) "Department" means the department of commerce provided for in 2-15-1801.

(5) "Development loan" means money loaned to a certified microbusiness development corporation by the department for the purpose of making microbusiness loans under the provisions of this part.

(6) "Microbusiness development corporation" means a nonprofit corporation organized and existing under the laws of the state to provide training, technical assistance, and access to capital for the startup or expansion of qualified microbusinesses.

(7) "Microbusiness loan" means a loan made from or guaranteed by a revolving loan fund contributed to by the microbusiness finance program.



(8) "Program" means the microbusiness finance program established in 17-6-406.

(9) "Qualified microbusiness" means a business enterprise located in the state that:

(a) produces goods or provides services and has fewer than 10 full-time equivalent employees and annual gross ~~revenues~~ revenue of less than \$500,000; or

(b) produces energy using an alternative renewable energy source as defined in ~~90-4-102~~ 15-6-225.

(10) "Revolving loan fund" means a fund required to be established by a certified microbusiness development corporation that receives a development loan."

**Section 6.** Section 30-16-103, MCA, is amended to read:

**"30-16-103. Definitions.** As used in this chapter, the following definitions apply:

(1) "Board of review" means the body established to provide policy direction to the department of revenue in designing and recommending to the legislature the implementation of a plan for a business registration and licensing system.

(2) "Department" means the department of revenue established in 2-15-1301.

(3) (a) "License" means the whole or part of any agency permit, license, certificate, approval, registration, or charter or any form or permission required by law or administrative rule to engage in any retail, wholesale, consumer service, manufacturing, or distributing activity, including the production of energy using an alternative renewable energy source as defined in ~~90-4-102~~ 15-6-225.

(b) License does not include licenses, permits, or registrations issued under Title 30, chapter 10, parts 1 through 3, Title 33, Title 37, and Title 75, chapters 1 through 3, 5 through 7, 10, 15, 16, and 20, which are excluded from the coverage of this chapter.

(4) "Person" means an individual, sole proprietorship, partnership, association, cooperative, limited liability company, corporation, nonprofit organization, state or local government agency, or any other organization required to register with the state to do business in Montana and to obtain one or more licenses from the state or any of its agencies.

(5) "Plan" means the business registration and licensing system and the procedures developed by the board of review that are under the administrative control of the department."

**Section 7.** Section 75-10-103, MCA, is amended to read:

**"75-10-103. Definitions.** Unless the context clearly requires otherwise, in this part, the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

(2) "Container site" means a solid waste management facility that:

(a) is generally open to the public for the collection of solid waste that is generated by more than one household or firm and that is collected in a refuse container with a total capacity of not more than 50 cubic yards; or

(b) receives waste from waste collection vehicles and:

(i) receives no more than 3,000 tons of waste each year;

(ii) has control measures in place, including onsite staffing, to adequately contain solid wastes and blowing litter on the site and to minimize spills and leakage of liquid wastes; and

(iii) is a site at which a local government unit requires commercial waste haulers to deposit wastes at the site only during hours that the site is staffed.

(3) "Department" means the department of environmental quality provided for in 2-15-3501.

~~(4) "Front-end implementation funds" means the money granted to local governments for purchase of capital equipment to be used for a solid waste management system.~~

~~(5) "Front-end organizational funds" means the money to be loaned to local governments for initial operating capital, site evaluation and negotiation, final design engineering and cost estimates, construction contract documents, final contract negotiations with energy users, material markets, and waste suppliers, contract negotiations with private operational managers, and financial and legal consultations.~~

~~(6) "Front-end planning funds" means the money granted to local governments for contract negotiations between local governments, predesign engineering and cost estimates, administrative costs, preliminary contract negotiations with energy users and waste suppliers, financial feasibility analysis by a financial consultant, legal consultations, opinions, and review of contracts.~~

~~(7)~~(4) "Local government" means a county, incorporated city or town, or solid waste management district organized under the laws of this state.

~~(8)~~(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.

~~(9)~~(6) "Resource recovery facility" means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

~~(10)~~(7) (a) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage, rubbish, refuse, ashes, sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood byproducts and inert materials.

(b) Solid waste does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department, slash and forest debris regulated under laws administered by the department of natural resources and conservation, or marketable byproducts.

~~(11)~~(8) "Solid waste management system" means any system that controls the storage, treatment, recycling, recovery, or disposal of solid waste. For the purposes of this definition, a container site is not a component of a solid waste management system.

~~(12)~~ (9) "State solid waste plan" means the statewide plan formulated by the department as authorized by this part."

**Section 8.** Section 75-10-104, MCA, is amended to read:

**"75-10-104. Duties of department.** The department shall:

- (1) prepare a state solid waste management and resource recovery plan as required by 75-10-807 for submission to the board;
- (2) prepare rules necessary for the implementation of this part for submission to the board, including but not limited to rules:
  - (a) governing the submission of plans for a solid waste management system;
  - ~~(b) governing procedures to be followed in applying for and making loans;~~
  - ~~(c) governing agreements between a local government and the department for grants or loans under this part;~~
  - ~~(d)~~ (b) establishing, for the purpose of determining the tonnage or volume-based solid waste management fee that a facility is subject to under 75-10-115(1)(c), methods for determining or estimating the amount of solid waste incinerated or disposed of at a facility;
  - ~~(e)~~ (c) establishing the license application fee that a facility is subject to under 75-10-115(1)(a);
  - ~~(f)~~ (d) establishing the flat annual license renewal fee that a facility is subject to under 75-10-115(1)(b);
  - ~~(g)~~ (e) establishing the tonnage or volume-based annual renewal fee that a facility is subject to under 75-10-115(1)(c);
  - ~~(h)~~ (f) providing procedures for the quarterly collection of the solid waste management fee provided for in 75-10-204(6); and
  - ~~(i)~~ (g) providing guidelines for integrated waste management;
  - ~~(3) provide financial assistance to local governments for front-end planning activities for a proposed solid waste management system that is compatible with the state plan whenever financial assistance is available;~~
  - (4)(3) provide technical assistance to persons within the state for planning, designing, constructing, financing, and operating:
    - (a) a solid waste management system in order to ensure that the system conforms to the state plan;
    - (b) integrated waste management programs; and
    - (c) collection, disposal, reduction, and educational programs for household hazardous waste and ~~conditionally exempt~~ small quantities of hazardous waste as defined in ~~ARM 16.44.402 that are exempt from regulation under Title 75, chapter 10, part 4;~~
  - ~~(5) provide front end organizational loans for the implementation of an approved solid waste management system whenever funds for loans are available;~~
  - ~~(6)~~ (4) enforce and administer the provisions of this part;
  - ~~(7) administer loans made by the state under the provisions of this part;~~
  - ~~(8)~~ (5) approve plans for a proposed solid waste management system submitted by a local government; and

~~(9)(6)~~ serve as a clearinghouse for information on waste reduction and reuse, recycling technology and markets, composting, and household hazardous waste disposal, including chemical compatibility.”

**Section 9.** Section 75-10-105, MCA, is amended to read:

**“75-10-105. Powers of department.** The department may:

(1) accept loans and grants from the federal government and other sources to carry out the provisions of this part; *and*

~~(2) make loans to a local government for the planning, design, and implementation of a solid waste management system;~~

~~(3) make grants for a local government for planning or implementation of a solid waste management system; and~~

~~(4)~~(2) collect the solid waste management fees provided for in 75-10-115.”

**Section 10.** Section 75-10-106, MCA, is amended to read:

**“75-10-106. Duties of board.** The board shall:

(1) adopt a state solid waste management and resource recovery plan after complying with the procedures outlined in 75-10-111; and

(2) adopt rules necessary for the implementation of this part, including but not limited to rules governing the following:

(a) submission of plans for a solid waste management system; *and*

~~(b) the procedures to be followed in applying for and making loans and grants;~~

~~(c) the requirements for eligibility for grants;~~

~~(d) the agreements between the local government and the department for grants and loans under this part; and~~

~~(e)~~(b) the application fee, flat annual license renewal fee, and tonnage or volume-based renewal fee for solid waste management systems prepared by the department pursuant to 75-10-104 and 75-10-115.”

**Section 11.** Section 80-12-201, MCA, is amended to read:

**“80-12-201. Loan agreements — general provisions.** (1) Each loan approved by the authority for issuance of a bond must include a loan agreement providing a payment schedule that may not exceed 30 years.

(2) The agreement must specify a reasonable rate of interest, which rate may be a variable rate provided the method of determination is contained in the loan agreement.

(3) Loans approved by the authority for issuance of a bond may be secured by any liens or collateral the financial institution considers necessary.

(4) The money received under a loan agreement may be used for:

(a) acquisition of farm or ranch land;

(b) a down payment on the acquisition of farm or ranch land;

(c) acquisition or construction of depreciable property used in the operation of a farm or ranch; or

(d) production of energy using an alternative renewable energy source as defined in ~~90-4-102~~ 15-6-225.”

**Section 12.** Section 90-5-101, MCA, is amended to read:

**“90-5-101. Definitions.** As used in this part, unless the context otherwise requires, the following definitions apply:

(1) “Agricultural enterprises” includes but is not limited to producing, warehousing, storing, fattening, treating, handling, distributing, or selling farm products or livestock.

(2) “Bonds” means bonds, refunding bonds, notes, or other obligations issued by a municipality or county under the authority of this part, including without limitation short-term bonds or notes issued in anticipation of the issuance of long-term bonds or notes.

(3) “Electric energy generation facility” means any combination of a physically connected generator or generators, associated prime movers, and other associated property and transmission facilities and upgrades and improvements of transmission facilities, including appurtenant land and improvements and personal property, that are normally operated together to produce and transfer electric power. The term includes but is not limited to generating facilities that produce and transfer electricity from coal-fired steam turbines, oil or gas turbines, wind turbines, solar power sources, fuel cells, or turbine generators that are driven by falling water.

(4) “Family services provider” means organizations, including nonprofit corporations, that provide human services for children and adults, including but not limited to early care services for children, youth services, health services, social services, habilitative services, rehabilitative services, preventive care, and supportive services, and training, educational, and referral activities in support of human services.

(5) “Governing body” means the board or body in which the general legislative powers of the municipality or county are vested.

(6) “Higher education facilities” means any real or personal properties required or useful for the operation of an institution of higher education.

(7) “Institution of higher education” means any private, nonprofit corporation or institution within the state of Montana:

- (a) authorized to provide or operate educational facilities; and
  - (b) providing a program of education beyond the high school level.
- (8) “Mortgage” means a mortgage or deed of trust or other security device.
- (9) “Municipality” means any incorporated city or town in the state.

(10) “Project” means any land; any building or other improvement; and any other real or personal properties considered necessary in connection with the improvement, whether or not now in existence, that must be suitable for use for commercial, manufacturing, agricultural, or industrial enterprises; recreation or tourist facilities; local, state, and federal governmental facilities; multifamily housing, hospitals, long-term care facilities, community-based facilities for individuals who are persons with developmental disabilities as defined in 53-20-102, or medical facilities; higher education facilities; electric energy generation facilities; family services provider facilities; the production of energy using an alternative renewable energy source as defined in ~~90-4-102~~ 15-6-225; and any combination of these projects.”

**Section 13.** Section 90-8-104, MCA, is amended to read:

**“90-8-104. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Capital base" means equity capital raised by a certified Montana capital company or by a certified Montana small business investment capital company for which tax credits were claimed under this chapter.

(2) "Certified Montana capital company" or "certified Montana small business investment capital company" means:

(a) a development credit corporation created pursuant to Title 32, chapter 4; or

(b) a profit or nonprofit entity organized and existing under the laws of Montana, created for the purpose of making venture or risk capital available for qualified investments and that has been certified by the department.

(3) "Department" means the department of commerce.

(4) "Montana business" means a business that is located or principally based within Montana.

(5) "Qualified investment" means an investment that does not violate any of the provisions of this chapter, that does not displace other sources of equity or debt financing that are available to the project unless the department determines that the investment furthers the purposes of this chapter, and that is:

(a) a debt or equity financing of a Montana business that meets both of the following criteria:

(i) the business is engaged in one or more of the following activities:

(A) manufacturing;

(B) agricultural, fishery, or forestry production and processing;

(C) mineral production and processing, except for conventional oil and gas exploration;

(D) recognized nonfossil forms of energy generation or the manufacture of low emission wood or biomass combustion devices as defined in 15-32-102;

(E) transportation;

(F) research and development of products or processes associated with any of the activities enumerated in subsections (5)(a)(i)(A) through (5)(a)(i)(E);

(G) wholesale or retail distribution activities for which products produced in Montana comprise 50% or more of the gross sales receipts;

(H) any activity conducted in the state for which 50% or more of the gross receipts are derived from the sale of products or services outside Montana;

(I) tourism; and

(J) the production of energy using an alternative renewable energy source as defined in ~~90-4-102~~ 15-6-225; and

(ii) the business is a small business as defined in rules adopted by the department and is a small business pursuant to the regulations promulgated by the United States small business administration at 13 CFR 121, et seq.;

(b) a debt or equity financing of a business outside Montana if the investment is likely to produce a qualified investment in Montana, as long as the investment does not exceed 25% of the capital base of the capital company; or

(c) a debt or equity financing of an acquisition of a non-Montana business that will be relocated in Montana.

(6) "Qualified Montana capital company" means a certified Montana capital company that has been designated a qualified capital company under the provisions of 90-8-202 so that investors in the company may receive the tax credits authorized in 90-8-202.

(7) "Qualified Montana small business investment capital company" means a certified Montana small business investment capital company that has been designated as a qualified small business investment capital company under the provisions of 90-8-202 so that investors in the company may receive the tax credits authorized in 90-8-202."

**Section 14. Repealer.** Sections 75-10-121, 75-10-122, 75-10-123, 75-10-124, 75-10-125, 90-2-140, 90-2-141, 90-4-101, 90-4-102, 90-4-103, 90-4-104, 90-4-105, 90-4-106, 90-4-109, 90-4-111, and 90-4-112, MCA, are repealed.

**Section 15. Coordination instruction.** (1) If House Bill No. 76 and [this act] are both passed and approved and if [this act] repeals 90-4-102, then the reference to 90-4-102 in [section 3 of House Bill No. 76], amending 17-6-403, is changed to 15-6-225.

(2) If Senate Bill No. 338 and [this act] are both passed and approved and if Senate Bill No. 338 repeals 15-30-103, then the reference to 15-30-103 in [section 4 of this act] is changed to [sections 1 through 6 of Senate Bill No. 338].

Approved April 17, 2003

## CHAPTER NO. 406

[SB 191]

AN ACT PROVIDING FOR THE DESTRUCTION OF UNSUBSTANTIATED REPORTS OF CHILD ABUSE OR NEGLECT; DEFINING "UNSUBSTANTIATED"; AND AMENDING SECTIONS 41-3-102 AND 41-3-202, MCA.

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

**Section 1.** Section 41-3-102, MCA, is amended to read:

**"41-3-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "Abandon", "abandoned", and "abandonment" mean:

(a) leaving a child under circumstances that make reasonable the belief that the parent does not intend to resume care of the child in the future;

(b) willfully surrendering physical custody for a period of 6 months and during that period not manifesting to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child;

(c) that the parent is unknown and has been unknown for a period of 90 days and that reasonable efforts to identify and locate the parent have failed; or

(d) the voluntary surrender, as defined in 40-6-402, by a parent of a newborn who is no more than 30 days old to an emergency services provider, as defined in 40-6-402.

(2) "A person responsible for a child's welfare" means:

(a) the child's parent, guardian, foster parent or an adult who resides in the same home in which the child resides;

(b) a person providing care in a day-care facility;

(c) an employee of a public or private residential institution, facility, home, or agency; or

(d) any other person responsible for the child's welfare in a residential setting.

(3) "Abused or neglected" means the state or condition of a child who has suffered child abuse or neglect.

(4) (a) "Adequate health care" means any medical care or nonmedical remedial health care recognized by an insurer licensed to provide disability insurance under Title 33, including the prevention of the withholding of medically indicated treatment or medically indicated psychological care permitted or authorized under state law.

(b) This chapter may not be construed to require or justify a finding of child abuse or neglect for the sole reason that a parent or legal guardian, ~~due to~~ *because of* religious beliefs, does not provide adequate health care for a child. However, this chapter may not be construed to limit the administrative or judicial authority of the state to ensure that medical care is provided to the child when there is imminent substantial risk of serious harm to the child.

(5) "Best interests of the child" means the physical, mental, and psychological conditions and needs of the child and any other factor considered by the court to be relevant to the child.

(6) "Child" or "youth" means any person under 18 years of age.

(7) (a) "Child abuse or neglect" means:

(i) actual harm to a child's health or welfare;

(ii) substantial risk of harm to a child's health or welfare; or

(iii) abandonment.

(b) The term includes actual harm or substantial risk of harm by the acts or omissions of a person responsible for the child's welfare.

(c) The term does not include self-defense, defense of others, or action taken to prevent the child from self-harm that does not constitute harm to a child's health or welfare.

(8) "Concurrent planning" means to work toward reunification of the child with the family while at the same time developing and implementing an alternative permanent plan.

(9) "Department" means the department of public health and human services provided for in 2-15-2201.

(10) "Family group conference" means a meeting that involves family members in either developing treatment plans or making placement decisions, or both.

(11) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

(a) inflicts or allows to be inflicted upon the child physical abuse, physical neglect, or psychological abuse or neglect;



(b) commits or allows to be committed sexual abuse or exploitation of the child;

(c) induces or attempts to induce a child into giving untrue testimony that the child or another child was abused or neglected by a parent or person responsible for the child's welfare;

(d) causes malnutrition or failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered financial or other reasonable means to do so;

(e) exposes or allows the child to be exposed to an unreasonable risk to the child's health or welfare by failing to intervene or eliminate the risk; or

(f) abandons the child.

(12) "Limited emancipation" means a status conferred on a youth by a court in accordance with 41-3-438 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older.

(13) "Parent" means a biological or adoptive parent or stepparent.

(14) "Parent-child legal relationship" means the legal relationship that exists between a child and the child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been terminated by competent judicial decree, as provided in 40-6-234, Title 42, or part 6 of this chapter.

(15) "Permanent placement" means reunification of the child with the child's parent, adoption, placement with a legal guardian, placement with a fit and willing relative, or placement in another planned permanent living arrangement until the child reaches 18 years of age.

(16) "Physical abuse" means an intentional act, an intentional omission, or gross negligence resulting in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns, bone fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or function, or death.

(17) "Physical neglect" means either failure to provide basic necessities, including but not limited to appropriate and adequate nutrition, protective shelter from the elements, and appropriate clothing related to weather conditions, or failure to provide cleanliness and general supervision, or both.

(18) "Psychological abuse or neglect" means severe maltreatment through acts or omissions that are injurious to the child's emotional, intellectual, or psychological capacity to function, including acts of violence against another person residing in the child's home.

(19) "Reasonable cause to suspect" means cause that would lead a reasonable person to believe that child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known to the person.

(20) "Residential setting" means an out-of-home placement where the child typically resides for longer than 30 days for the purpose of receiving food, shelter, security, guidance, and, if necessary, treatment.

(21) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, sexual abuse, ritual abuse, or incest, as described in Title 45, chapter 5.

(b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area while attending to the sanitary or health care needs of that infant or toddler by a parent or other person responsible for the child's welfare.

(22) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging sexual abuse of children, as described in 45-5-625.

(23) "Social worker" means an employee of the department who, before the employee's field assignment, has been educated or trained in a program of social work or a related field that includes cognitive and family systems treatment or who has equivalent verified experience or verified training in the investigation of child abuse, neglect, and endangerment. This definition does not apply to any provision of this code that is not in this chapter.

(24) "Treatment plan" means a written agreement between the department and the parent or guardian or a court order that includes action that must be taken to resolve the condition or conduct of the parent or guardian that resulted in the need for protective services for the child. The treatment plan may involve court services, the department, and other parties, if necessary, for protective services.

(25) "Unfounded" means that after an investigation, the investigating person has determined that the reported abuse, neglect, or exploitation has not occurred.

(26) *"Unsubstantiated" means that after an investigation, the investigator was unable to determine by a preponderance of the evidence that the reported abuse, neglect, or exploitation has occurred.*

~~(26)~~ (27) (a) "Withholding of medically indicated treatment" means the failure to respond to an infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication, that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting the conditions.

(b) The term does not include the failure to provide treatment, other than appropriate nutrition, hydration, or medication, to an infant when, in the treating physician's or physicians' reasonable medical judgment:

- (i) the infant is chronically and irreversibly comatose;
- (ii) the provision of treatment would:
  - (A) merely prolong dying;
  - (B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or
  - (C) otherwise be futile in terms of the survival of the infant; or
- (iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane. For purposes of this subsection ~~(26)~~ (27), "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections

available under state laws regarding medical neglect of children 1 year of age or older.

~~(27)~~ (28) "Youth in need of care" means a youth who has been adjudicated or determined, after a hearing, to be or to have been abused, neglected, or abandoned."

**Section 2.** Section 41-3-202, MCA, is amended to read:

**"41-3-202. Action on reporting.** (1) Upon receipt of a report that a child is or has been abused or neglected, the department shall promptly assess the information contained in the report and make a determination regarding the level of response required and the timeframe within which action must be initiated. If the department determines that an investigation is required, a social worker, the county attorney, or a peace officer shall promptly conduct a thorough investigation into the circumstances surrounding the allegations of abuse or neglect of the child. The investigation may include an investigation at the home of the child involved, the child's school or day-care facility, or any other place where the child is present and into all other nonfinancial matters that in the discretion of the investigator are relevant to the investigation. In conducting an investigation under this section, a social worker may not inquire into the financial status of the child's family or of any other person responsible for the child's care, except as necessary to ascertain eligibility for state or federal assistance programs or to comply with the provisions of 41-3-446.

(2) An initial investigation of alleged abuse or neglect may be conducted when an anonymous report is received. However, the investigation must within 48 hours develop independent, corroborative, and attributable information in order for the investigation to continue. Without the development of independent, corroborative, and attributable information, a child may not be removed from the home.

(3) The social worker is responsible for assessing the family and planning for the child. If the child is treated at a medical facility, the social worker, county attorney, or peace officer, consistent with reasonable medical practice, has the right of access to the child for interviews, photographs, and securing physical evidence and has the right of access to relevant hospital and medical records pertaining to the child. If a child interview is considered necessary, the social worker, county attorney, or peace officer may conduct an interview of the child. The interview may be conducted in the presence of the parent or guardian or an employee of the school or day-care facility attended by the child.

(4) Subject to 41-3-205(3), if the child's interview is audiotaped or videotaped, an unedited audiotape or videotape with audio track must be made available, upon request, for unencumbered review by the family.

(5) (a) If from the investigation the department has reasonable cause to suspect that the child suffered abuse or neglect, the department may provide protective services to the child pursuant to 41-3-301 and may provide protective services to any other child under the same care. The department shall:

(i) after interviewing the parent or guardian, if reasonably available, document its determination regarding abuse or neglect of a child; and

(ii) notify the child's family of its investigation and determination, unless the notification can reasonably be expected to result in harm to the child or other person.

(b) If from the investigation it is determined that the child has not suffered abuse or neglect and the initial report is determined to be unfounded, the

department and the social worker, county attorney, or peace officer who conducted the investigation into the circumstances surrounding the allegations of abuse or neglect shall destroy all of their records concerning the report and the investigation. The destruction must be completed within 30 days of the determination that the child has not suffered abuse or neglect.

*(c) (i) If the report is unsubstantiated, the department and the social worker who conducted the investigation into the circumstances surrounding the initial allegations of abuse or neglect shall destroy all of the records, except for medical records, concerning the unsubstantiated report and the investigation within 30 days after the end of the 3-year period starting from the date the report was determined to be unsubstantiated, unless:*

*(A) there had been a previous or there is a subsequent substantiated report concerning the same person; or*

*(B) an order has been issued under this chapter based on the circumstances surrounding the initial allegations.*

*(ii) A person who is the subject of an unsubstantiated report that was made prior to [the effective date of this act] and after which a period of 3 years has elapsed without there being submitted a subsequent substantiated report or an order issued under this chapter based on the circumstances surrounding the initial allegations may request that the department destroy all of the records concerning the unsubstantiated report as provided in subsection (5)(c)(i).*

(6) The investigating social worker, within 60 days of commencing an investigation, shall also furnish a written report to the department and, upon request, to the family. Subject to ~~subsection~~ subsections (5)(b) and (5)(c), the department shall maintain a record system documenting investigations and determinations of child abuse and neglect cases.

(7) Any person reporting abuse or neglect that involves acts or omissions on the part of a public or private residential institution, home, facility, or agency is responsible for ensuring that the report is made to the department through its local office.”

Approved April 17, 2003

## CHAPTER NO. 407

[SB 217]

AN ACT REQUIRING THE USE OF CHILD SAFETY RESTRAINTS IN MOTOR VEHICLES FOR CHILDREN UNDER 6 YEARS OF AGE WHO WEIGH LESS THAN 60 POUNDS; ASSIGNING THE RESPONSIBILITY FOR USE OF CHILD SAFETY RESTRAINTS TO THE DRIVER; REMOVING THE PROVISION REQUIRING NO MORE THAN THREE CHILD SAFETY RESTRAINT SYSTEMS IN A VEHICLE; AND AMENDING SECTIONS 61-9-420 AND 61-13-103, MCA.

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

**Section 1.** Section 61-9-420, MCA, is amended to read:

**“61-9-420. Child safety restraint systems — standards — exemptions.** (1) If a child under ~~2~~ 6 years of age *and weighing less than 60 pounds* is a passenger in a motor vehicle, that motor vehicle must be equipped

with one child safety restraint for each child in the vehicle and each child must be properly restrained.

~~(2) A child between 2 and 4 years of age or weighing less than 40 pounds who is a passenger in a motor vehicle must be properly restrained or restrained in a safety belt that meets applicable federal motor vehicle safety standards.~~

~~(3)(2)~~ The department shall by rule establish standards in compliance with 61-9-419 through 61-9-423 and applicable federal standards for approved types of child safety restraint systems ~~purchased after January 1, 1984.~~

~~(4) A person is not required to have more than three child safety restraint systems in a vehicle.~~

~~(5)(3)~~ The department may by rule exempt from the requirements of ~~subsection (1) subsection (1)~~ a child who because of a physical or medical condition or body size cannot be placed in a child safety restraint ~~system or safety belt.~~

**Section 2.** Section 61-13-103, MCA, is amended to read:

**“61-13-103. Seatbelt use required — exceptions.** (1) ~~No~~ A driver may *not* operate a motor vehicle upon a highway of the state of Montana unless each occupant of a designated seating position is wearing a properly adjusted and fastened seatbelt *or, if 61-9-420 applies, is properly restrained in a child safety restraint.*

(2) The provisions of this section do not apply to:

(a) an occupant of a motor vehicle who possesses a written statement from a licensed physician that ~~he~~ *the occupant* is unable to wear a seatbelt for medical reasons;

(b) an occupant of a motor vehicle in which all seatbelts are being used by other occupants;

(c) an operator of a motorcycle as defined in 61-1-105 or a motor-driven cycle as defined in 61-1-106;

(d) an occupant of a vehicle licensed as special mobile equipment as defined in 61-1-104;

~~(e) children subject to the provisions of 61-9-420; or~~

~~(f)(e)~~ an occupant who makes frequent stops with a motor vehicle ~~in his~~ *during* official job duties and who may be exempted by the department.

(3) The department may adopt rules to implement subsection ~~(2)(f)~~ (2)(e).

(4) The department or its agent may not require a driver who may be in violation of this section to stop except upon reasonable cause to believe that ~~he~~ *the driver* has violated another traffic regulation or that ~~his~~ *the driver's* vehicle is unsafe or not equipped as required by law.”

Approved April 17, 2003

## CHAPTER NO. 408

[SB 226]

AN ACT PROVIDING THAT AN ARREST FOR DRUG OR GANG-RELATED ACTIVITY CONSTITUTES NONCOMPLIANCE WITH A TENANT'S DUTY TO MAINTAIN A DWELLING UNIT AND A LANDLORD'S DUTY TO

MAINTAIN PREMISES; REVISING THE TIME PERIOD FOR NOTIFICATION OF INTENDED TERMINATION BASED ON THE NONCOMPLIANCE; REVISING HEARING TIME REQUIREMENTS FOR REPOSSESSION ACTIONS BASED ON THE NONCOMPLIANCE; AND AMENDING SECTIONS 70-24-303, 70-24-321, 70-24-422, AND 70-24-427, MCA.

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

**Section 1.** Section 70-24-303, MCA, is amended to read:

**“70-24-303. Landlord to maintain premises — agreement that tenant perform duties — limitation of landlord’s liability for failure of smoke detector.** (1) A landlord ~~shall~~:

(a) *shall* comply with the requirements of applicable building and housing codes materially affecting health and safety in effect at the time of original construction in all dwelling units where construction is completed after July 1, 1977;

(b) *may not knowingly allow any tenant or other person to engage in any activity on the premises that creates a reasonable potential that the premises may be damaged or destroyed or that neighboring tenants may be injured by any of the following:*

(i) *criminal production or manufacture of dangerous drugs, as prohibited by 45-9-110;*

(ii) *operation of an unlawful clandestine laboratory, as prohibited by 45-9-132; or*

(iii) *gang-related activities, as prohibited by Title 45, chapter 8, part 4;*

~~(b)~~(c) *shall* make repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;

~~(c)~~(d) *shall* keep all common areas of the premises in a clean and safe condition;

~~(d)~~(e) *shall* maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by the landlord;

~~(e)~~(f) *shall*, unless otherwise provided in a rental agreement, provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal;

~~(f)~~(g) *shall* supply running water and reasonable amounts of hot water at all times and reasonable heat between October 1 and May 1, except if the building that includes the dwelling unit is not required by law to be equipped for that purpose or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant; and

~~(g)~~(h) *shall* install, in accordance with rules adopted by the department of justice, an approved smoke detector in each dwelling unit under the landlord’s control. Upon commencement of a rental agreement, the landlord shall verify that the smoke detector in the dwelling unit is in good working order. The tenant shall maintain the smoke detector in good working order during the tenant’s rental period. For purposes of this subsection, an approved smoke detector is a device that is capable of detecting visible or invisible particles of combustion and

that bears a label or other identification issued by an approved testing agency having a service for inspection of materials and workmanship at the factory during fabrication and assembly.

(2) If the duty imposed by subsection (1)(a) is greater than a duty imposed by subsections (1)(b) through ~~(1)(g)~~ (1)(h), a landlord's duty must be determined by reference to subsection (1)(a).

(3) A landlord and tenant of a one-, two-, or three-family residence may agree in writing that the tenant perform the landlord's duties specified in subsections ~~(1)(e)~~ (1)(f) and ~~(1)(f)~~ (1)(g) ~~of this section~~ and specified repairs, maintenance tasks, alteration, and remodeling but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord.

(4) A landlord and tenant of a one-, two-, or three-family residence may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only if:

(a) the agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord and is set forth in a separate writing signed by the parties and supported by adequate consideration;

(b) the work is not necessary to cure noncompliance with subsection (1)(a); and

(c) the agreement does not diminish the obligation of the landlord to other tenants in the premises.

(5) The landlord is not liable for damages caused as a result of the failure of the smoke detector required under subsection ~~(1)(g)~~ (1)(h)."

**Section 2.** Section 70-24-321, MCA, is amended to read:

**"70-24-321. Tenant to maintain dwelling unit.** (1) A tenant shall:

(a) comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;

(b) keep that part of the premises that the tenant occupies and uses as reasonably clean and safe as the condition of the premises permits;

(c) dispose from the dwelling unit all ashes, garbage, rubbish, and other waste in a clean and safe manner;

(d) keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;

(e) use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, in the premises;

(f) conduct oneself and require other persons on the premises with the tenant's consent to conduct themselves in a manner, that will not disturb the tenant's neighbors' peaceful enjoyment of the premises; and

(g) use the parts of the premises, including the living room, bedroom, kitchen, bathroom, and dining room, in a reasonable manner, considering the purposes for which they were designed and intended. This section does not preclude the right of the tenant to operate a limited business or cottage industry on the premises, subject to state and local laws, ~~provided~~ if the landlord has consented in writing. The landlord may not unreasonably withhold consent;

~~provided that~~ if the limited business or cottage industry is operated within reasonable rules of the landlord.

(2) A tenant may not destroy, deface, damage, impair, or remove any part of the premises or permit any person to do so.

(3) A tenant may not engage or knowingly allow any person to engage in any activity on the premises that creates a reasonable potential that the premises may be damaged or destroyed or that neighboring tenants may be injured by any of the following:

(a) criminal production or manufacture of dangerous drugs, as prohibited by 45-9-110;

(b) operation of an unlawful clandestine laboratory, as prohibited by 45-9-132; or

(c) gang-related activities, as prohibited by Title 45, chapter 8, part 4.”

**Section 3.** Section 70-24-422, MCA, is amended to read:

**“70-24-422. Noncompliance of tenant generally — landlord’s right of termination — damages — injunction.** (1) Except as provided in this chapter, if there is a noncompliance by the tenant with the rental agreement or a noncompliance with 70-24-321, the landlord may deliver a written notice to the tenant pursuant to 70-24-108 specifying the acts and omissions constituting the noncompliance and that the rental agreement will terminate upon a date specified in the notice not less than the minimum number of days after receipt of the notice provided for in this section. The rental agreement terminates as provided in the notice, subject to the following:

(a) If the noncompliance is remediable by repairs, the payment of damages, or otherwise and the tenant adequately remedies the noncompliance before the date specified in the notice, the rental agreement does not terminate.

(b) If the noncompliance involves an unauthorized pet, the notice period is 3 days.

(c) If the noncompliance involves unauthorized persons residing in the rental unit, the notice period is 3 days.

(d) If the noncompliance is not listed in ~~subsection (1)(b) or (1)(c)~~ subsection (1)(b) or (1)(c), the notice period is 14 days.

(e) If substantially the same act or omission that constituted a prior noncompliance of which notice was given recurs within 6 months, the landlord may terminate the rental agreement upon at least 5 days’ written notice specifying the noncompliance and the date of the termination of the rental agreement.

(f) This subsection (1) does not apply to a rental agreement involving a tenant who rents space for a mobile home but does not rent the mobile home.

(2) If rent is unpaid when due and the tenant fails to pay rent within 3 days after written notice by the landlord of nonpayment and the landlord’s intention to terminate the rental agreement if the rent is not paid within that period, the landlord may terminate the rental agreement. This subsection does not apply to a rental agreement involving a tenant who rents space for a mobile home but does not rent the mobile home.

(3) If the tenant destroys, defaces, damages, impairs, or removes any part of the premises in violation of 70-24-321(2), the landlord may terminate the rental



agreement upon giving 3 days' written notice specifying the noncompliance under the provisions of 70-24-321(2).

*(4) If the tenant creates a reasonable potential that the premises may be damaged or destroyed or that neighboring tenants may be injured, as evidenced by the tenant being arrested for or charged with an act that violates the provisions of 70-24-321(3), the landlord may terminate the rental agreement upon giving 3 days' written notice specifying the violation and noncompliance under the provisions of 70-24-321(3).*

~~(4)~~(5) Except as provided in this chapter, the landlord may recover actual damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or 70-24-321. Except as provided in subsection ~~(5)~~ (6), if the tenant's noncompliance is purposeful, the landlord may recover treble damages.

~~(5)~~(6) Treble damages may not be recovered for the tenant's early termination of the tenancy.

~~(6)~~(7) Subsections (3) through ~~(5)~~ (6) apply to all rental agreements, including those involving a tenant who rents space for a mobile home but does not rent the mobile home.

~~(7)~~(8) The landlord is not bound by this section in the event that:

(a) the rental agreement does not involve a tenant who rents space for a mobile home but does not rent the mobile home; and

(b) the landlord elects to use the 30-day notice for termination of tenancy as provided in 70-24-441."

**Section 4.** Section 70-24-427, MCA, is amended to read:

**"70-24-427. Landlord's remedies after termination — action for possession.** (1) If the rental agreement is terminated, the landlord has a claim for possession and for rent and a separate claim for actual damages for any breach of the rental agreement.

(2) An action filed pursuant to subsection (1) in a court must be heard within 20 days after the tenant's appearance or the answer date stated in the summons, *except that if the rental agreement is terminated because of noncompliance under 70-24-321(3), the action must be heard within 5 business days after the tenant's appearance or the answer date stated in the summons.* If the action is appealed to the district court, the hearing must be held within 20 days after the case is transmitted to the district court, *except that if the rental agreement is terminated because of noncompliance under 70-24-321(3), the hearing must be held within 5 business days after the case is transmitted to the district court.*

(3) The landlord and tenant may stipulate to a continuance of the hearing beyond the time limit in subsection (2) without the necessity of an undertaking.

(4) In a landlord's action for possession filed pursuant to subsection (1), the court shall rule on the action within 5 days after the hearing."

Approved April 17, 2003

## CHAPTER NO. 409

[SB 254]

AN ACT REGULATING RENTAL VEHICLE ENTITIES AND CUSTOMER SERVICE REPRESENTATIVES WITH REGARD TO THE SALE OF RENTAL

VEHICLE INSURANCE; REQUIRING TRAINING OF CUSTOMER SERVICE REPRESENTATIVES; PROVIDING DEFINITIONS; AND PROVIDING AN APPLICABILITY DATE.

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

**Section 1. Definitions.** As used in [sections 1 through 5], the following definitions apply:

- (1) "Customer service representative" means an employee of a rental vehicle entity.
- (2) "Present rental vehicle insurance information" means to present the option to acquire rental vehicle insurance to a renter.
- (3) "Rental agreement" means a written agreement setting forth the terms and conditions governing the use of a vehicle that is provided by a rental vehicle entity for the rental or lease of a rental vehicle for a period of not more than 90 days.
- (4) "Rental vehicle" means a motor vehicle that is designated as:
  - (a) a private passenger motor vehicle, including an automobile, a passenger van, a minivan, or a sport utility vehicle; or
  - (b) a cargo vehicle, including a cargo van, a pickup truck, or a truck with a gross weight of less than 26,000 pounds that does not require the operator to possess a commercial driver's license.
- (5) "Rental vehicle entity" means an entity in the business of providing rental vehicles to the public under a rental agreement.
- (6) "Rental vehicle insurance" means insurance that a renter purchases from a rental vehicle entity as part of the rental agreement in conjunction with the use of a rental vehicle.
- (7) "Renter" means a person who obtains the use of a rental vehicle from a rental vehicle entity under the terms of a rental agreement.

**Section 2. Rental vehicle entity license — customer service representative requirements — recordkeeping.** (1) A rental vehicle entity may obtain an insurance license as a business entity.

- (2) A rental vehicle entity or customer service representative may not present rental vehicle insurance information to renters unless the rental vehicle entity is licensed and the customer service representative has been trained as required under [section 3].
- (3) A customer service representative may present rental vehicle insurance information only on behalf of a rental vehicle entity.
- (4) A rental vehicle entity shall supervise a customer service representative who provides rental vehicle insurance under the provisions of [sections 1 through 5].

**Section 3. Training of customer service representative.** (1) A rental vehicle entity shall provide a training program for each customer service representative prior to allowing that customer service representative to present rental vehicle insurance information to renters.

- (2) The rental vehicle entity shall present the training program to the commissioner for approval.

(3) The training may be in an electronic or video format and must cover the following areas:

(a) rental vehicle insurance;

(b) specific instruction that information may not be presented either by statement or conduct, express or implied, that would lead the renter to believe:

(i) that the purchase of rental vehicle insurance is required to rent a vehicle;

(ii) that the renter does not have a personal automobile insurance policy in place that provides coverage; or

(iii) that the customer service representative is qualified to evaluate the adequacy of the renter's existing insurance coverage.

(4) The training and education program must be submitted for review and approval pursuant to 33-17-1204 and 33-17-1205.

**Section 4. Rental vehicle entity requirements.** A rental vehicle entity may not solicit, negotiate, or sell rental vehicle insurance unless:

(1) at every location where rental vehicle agreements are executed, the rental vehicle entity prominently displays and makes readily available written material to each renter who may purchase rental vehicle insurance that:

(a) summarizes the material terms, exclusions, limitations, and conditions of coverage offered to renters, including the identity of the insurer;

(b) describes the process for filing claims in the event that the renter elects to purchase the coverage, including a toll-free telephone number to report a claim;

(c) provides the rental vehicle entity's name, address, telephone number, and business entity license number, as well as the commissioner's consumer hotline telephone number;

(d) informs the renter that the rental vehicle entity may provide a duplication of coverage already provided by a renter's automobile insurance policy;

(e) informs the renter that the purchase by the renter of the rental vehicle insurance is not required in order to rent a vehicle; and

(f) informs the renter that neither the rental vehicle entity nor the customer service representative is qualified to evaluate the adequacy of the renter's existing insurance coverage.

(2) Evidence of the rental vehicle insurance coverage must be stated in the rental agreement.

(3) The cost of the rental vehicle insurance must be separately itemized in the rental agreement, unless preselection of coverage is made in a master, corporate, or group agreement.

**Section 5. Recordkeeping and trust fund requirements.** (1) A rental vehicle entity shall keep records of insurance transactions pursuant to 33-17-1101.

(2) The commissioner may not require a rental vehicle entity to hold rental vehicle insurance premium in a separate trust account pursuant to 33-17-1102 if the premium for rental vehicle insurance is itemized as part of the rental agreement.

**Section 6. Codification instruction.** [Sections 1 through 5] are intended to be codified as an integral part of Title 33, chapter 17, and the provisions of Title 33, chapter 17, apply to [sections 1 through 5].

**Section 7. Applicability.** [This act] applies to contracts for rental vehicle insurance issued on or after October 1, 2003.

Approved April 17, 2003

## CHAPTER NO. 410

[SB 306]

AN ACT CREATING THE UNIFORM ATHLETE AGENTS ACT; PROVIDING FOR DEFINITIONS, SERVICE OF PROCESS, REGISTRATION OF ATHLETE AGENTS, AND CIVIL AND CRIMINAL PENALTIES; REQUIRING PAYMENT OF A \$200 BIENNIAL REGISTRATION OR RENEWAL FEE; ESTABLISHING CONTRACT CRITERIA FOR ATHLETE AGENTS AND STUDENT-ATHLETES; PROVIDING FOR NOTICE TO THE STUDENT-ATHLETE'S EDUCATIONAL INSTITUTION OF A CONTRACT BETWEEN A STUDENT-ATHLETE AND AN ATHLETE AGENT; GIVING STUDENT-ATHLETES THE RIGHT TO CANCEL THE CONTRACT WITH AN ATHLETE AGENT; PROVIDING RULEMAKING AUTHORITY TO THE DEPARTMENT OF LABOR AND INDUSTRY; AND AMENDING SECTION 37-1-401, MCA.

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

**Section 1. Short title.** [Sections 1 through 20] may be cited as the "Uniform Athlete Agents Act".

**Section 2. Definitions.** For the purposes of [sections 1 through 20], the following definitions apply:

(1) "Agency contract" means an agreement in which a student-athlete authorizes a person to negotiate or solicit a professional sports services contract or an endorsement contract on behalf of the student-athlete.

(2) (a) "Athlete agent" means an individual who enters into an agency contract with a student-athlete or, directly or indirectly, recruits or solicits a student-athlete to enter into an agency contract. The term includes an individual who represents to the public that the individual is an athlete agent.

(b) The term does not include a spouse, parent, sibling, grandparent, or legal guardian of the student-athlete or an individual acting solely on behalf of a professional sports team or professional sports organization.

(3) "Athletic director" means an individual responsible for administering the overall athletic program of an educational institution or, if an educational institution has separately administered athletic programs for male students and female students, the athletic program for males or the athletic program for females, as appropriate.

(4) "Contact" means a communication, direct or indirect, between an athlete agent and a student-athlete to recruit or solicit the student-athlete to enter into an agency contract.

(5) "Department" means the department of labor and industry provided for in 2-15-1701.

(6) "Endorsement contract" means an agreement under which a student-athlete is employed or receives consideration from another party based on the value to the other party that the student-athlete may have because of publicity, reputation, following, or fame obtained because of the student-athlete's athletic ability or performance.

(7) "Intercollegiate sport" means a sport played at the collegiate level with eligibility requirements for participation by a student-athlete established by a national association for the promotion or regulation of collegiate athletics.

(8) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental entity, or any other legal or commercial entity.

(9) "Professional sports services contract" means an agreement under which an individual is employed as or agrees to render services as a player on a professional sports team, as a member of a professional sports organization, or as a professional athlete.

(10) "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.

(11) "Registration" means registration as an athlete agent pursuant to [sections 1 through 20].

(12) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(13) "Student-athlete" means an individual who engages in, is eligible to engage in, or may be eligible in the future to engage in any intercollegiate sport. If an individual is permanently ineligible to participate in a particular intercollegiate sport, the individual is not a student-athlete for purposes of that sport.

**Section 3. Service of process — subpoenas.** (1) By acting as an athlete agent in this state, a nonresident individual appoints the secretary of state as the individual's agent for service of process in any civil action in this state related to the individual's actions as an athlete agent in this state.

(2) The department may issue subpoenas for any material that is relevant to the administration of [sections 1 through 20].

**Section 4. Athlete agents — registration required — void contracts.**

(1) Except as provided in subsection (2), an individual may not act as an athlete agent in this state without holding a certificate of registration issued under [section 6 or 8].

(2) Before being issued a certificate of registration, an individual may act as an athlete agent in this state for all purposes except signing an agency contract if:

(a) a student-athlete or another person acting on behalf of the student-athlete initiates communication with the individual; and

(b) within 7 days after an initial act as an athlete agent, the individual submits an application for registration as an athlete agent in this state.

(3) An agency contract resulting from conduct in violation of this section is void and the athlete agent shall return any consideration received under the contract.

**Section 5. Registration as athlete agent — form — requirements. (1)**

An applicant shall submit an application for registration to the department in a form prescribed by the department. The application must be in the name of an individual and, except as provided in subsection (2), signed or otherwise authenticated by the applicant under penalty of perjury. The application must contain:

(a) the name of the applicant and the address of the applicant's principal place of business;

(b) the name of the applicant's business or employer, if applicable;

(c) any business or occupation engaged in by the applicant for the 5 years preceding the date of submission of the application;

(d) a description of the applicant's:

(i) formal training as an athlete agent;

(ii) practical experience as an athlete agent; and

(iii) educational background relating to the applicant's activities as an athlete agent;

(e) the names and addresses of three individuals not related to the applicant who are willing to serve as references;

(f) the name, sport, and last-known team for each individual for whom the applicant acted as an athlete agent during the 5 years preceding the date of submission of the application;

(g) if the applicant's business is other than a corporation, the names and addresses of all persons who are partners, members, officers, managers, or associates or who share profits of the business;

(h) if the applicant's business is a corporation, the names of any officers, directors, and any shareholder of the corporation having an interest of 5% or greater;

(i) whether the applicant or any person named pursuant to subsections (1)(g) and (1)(h) has been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony and must identify the crime;

(j) whether there has been any administrative or judicial determination that the applicant or any person named pursuant to subsections (1)(g) and (1)(h) has made a false, misleading, deceptive, or fraudulent representation;

(k) any instance in which the conduct of the applicant or any person named pursuant to subsections (1)(g) and (1)(h) resulted in the imposition of a sanction, suspension, or declaration of ineligibility for a student-athlete or educational institution to participate in an interscholastic or intercollegiate athletic event;

(l) any sanction, suspension, or disciplinary action taken against the applicant or any person named pursuant to subsections (1)(g) and (1)(h) arising out of occupational or professional conduct; and

(m) whether there has been any denial of an application for, suspension or revocation of, or refusal to renew the registration or licensure of the applicant or any person named pursuant to subsections (1)(g) and (1)(h) as an athlete agent in any state.

(2) An individual who has submitted an application for and holds a certificate of registration or licensure as an athlete agent in another state may

submit a copy of the application and certificate in lieu of submitting an application in the form prescribed by subsection (1). The department shall accept the application and the certificate from the other state as an application for registration in this state if the application to the other state:

(a) was submitted in the other state within 6 months preceding the submission of the application in this state and the applicant certifies that the information contained in the application is current;

(b) contains information substantially similar to or more comprehensive than that required in an application submitted in this state; and

(c) was signed by the applicant under penalty of perjury.

**Section 6. Certificate of registration — issuance or denial — renewal.** (1) Except as provided in subsection (2), the department shall issue a certificate of registration to an individual who complies with [section 5(1)] or whose application has been accepted under [section 5(2)].

(2) The department may refuse to issue a certificate of registration if the department determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to act as an athlete agent. In making the determination, the department may consider whether the applicant has:

(a) been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony;

(b) made a materially false, misleading, deceptive, or fraudulent representation in the application or as an athlete agent;

(c) engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity;

(d) engaged in conduct prohibited by [section 14];

(e) had a registration or license as an athlete agent suspended, revoked, or denied or been refused renewal of registration or licensure as an athlete agent in any state;

(f) engaged in conduct the consequence of which was that a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event was imposed on a student-athlete or educational institution; or

(g) engaged in conduct that significantly adversely reflects on the applicant's credibility, honesty, or integrity.

(3) In making a determination under subsection (2), the department shall consider:

(a) how recently the conduct occurred;

(b) the nature of the conduct and the context in which it occurred; and

(c) any other relevant conduct of the applicant.

(4) An athlete agent may apply to renew a registration by submitting an application for renewal in a form prescribed by the department. The application for renewal must be signed by the applicant under penalty of perjury and must contain current information on all matters required in an original registration.

(5) An individual who has submitted an application for renewal of registration or licensure in another state, in lieu of submitting an application for renewal in the form prescribed pursuant to subsection (4), may file a copy of the

application for renewal and a valid certificate of registration or licensure from the other state. The department shall accept the application for renewal from the other state as an application for renewal in this state if the application to the other state:

(a) was submitted in the other state within 6 months preceding the filing in this state and the applicant certifies the information contained in the application for renewal is current;

(b) contains information substantially similar to or more comprehensive than that required in an application for renewal submitted in this state; and

(c) was signed by the applicant under penalty of perjury.

(6) A certificate of registration or a renewal of a registration is valid for 2 years.

**Section 7. Suspension, revocation, or refusal to renew registration.**

(1) The department may suspend, revoke, or refuse to renew a registration for conduct that would have justified denial of registration under [section 6(2)].

(2) The department may deny, suspend, revoke, or refuse to renew a certificate of registration or licensure only after proper notice and an opportunity for a hearing.

**Section 8. Temporary registration.** The department may issue a temporary certificate of registration while an application for registration or renewal of registration is pending.

**Section 9. Registration and renewal fees.** (1) An application for registration or renewal of registration must be accompanied by a fee of \$200.

(2) All fees and money received by the department must be deposited in a state special revenue account for use by the department in performing the duties required by [sections 1 through 20].

**Section 10. Required form of contract.** (1) An agency contract must be in a record and signed or otherwise authenticated by the parties.

(2) An agency contract must contain:

(a) the amount and method of calculating the consideration to be paid by the student-athlete for services to be provided by the athlete agent under the contract and any other consideration the athlete agent has received or will receive from any other source for entering into the contract or for providing the services;

(b) the name of any person not listed in the athlete agent's application for registration or renewal of registration who will be compensated because the student-athlete signed the agency contract;

(c) a description of any expenses that the student-athlete agrees to reimburse;

(d) a description of the services to be provided to the student-athlete;

(e) the duration of the contract; and

(f) the date of execution.

(3) An agency contract must contain, in close proximity to the signature of the student-athlete, a conspicuous notice in boldface type in capital letters stating:



WARNING TO STUDENT-ATHLETE  
IF YOU SIGN THIS CONTRACT:

(1) YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT-ATHLETE IN YOUR SPORT;

(2) IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS AFTER ENTERING INTO THIS CONTRACT, BOTH YOU AND YOUR ATHLETE AGENT SHALL NOTIFY YOUR ATHLETIC DIRECTOR; AND

(3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.

(4) An agency contract that does not conform to this section is voidable by the student-athlete. If a student-athlete voids an agency contract, the student-athlete is not required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student-athlete to enter into the contract.

(5) The athlete agent shall give a record of the signed or otherwise authenticated agency contract to the student-athlete at the time of execution.

**Section 11. Notice to educational institution.** (1) Within 72 hours after entering into an agency contract or before the next scheduled athletic event in which the student-athlete may participate, whichever occurs first, the athlete agent shall give notice in a record of the existence of the contract to the athletic director of the educational institution at which the student-athlete is enrolled or at which the athlete agent has reasonable grounds to believe the student-athlete intends to enroll.

(2) Within 72 hours after entering into an agency contract or before the next athletic event in which the student-athlete may participate, whichever occurs first, the student-athlete shall inform the athletic director of the educational institution at which the student-athlete is enrolled that the student-athlete has entered into an agency contract.

**Section 12. Student-athlete's right to cancel.** (1) A student-athlete may cancel an agency contract by giving notice of the cancellation to the athlete agent in a record within 14 days after the contract is signed.

(2) A student-athlete may not waive the right to cancel an agency contract.

(3) If a student-athlete cancels an agency contract, the student-athlete is not required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student-athlete to enter into the contract.

**Section 13. Required records.** (1) An athlete agent shall retain the following records for a period of 5 years:

(a) the name and address of each individual represented by the athlete agent;

(b) any agency contract entered into by the athlete agent; and

(c) any direct costs incurred by the athlete agent in the recruitment or solicitation of a student-athlete to enter into an agency contract.

(2) Records required to be retained by subsection (1) must be open to inspection by the department during normal business hours.

**Section 14. Prohibited conduct.** (1) An athlete agent, with the intent to induce a student-athlete to enter into an agency contract, may not:

(a) give any materially false or misleading information or make a materially false promise or representation;

(b) furnish anything of value to a student-athlete before the student-athlete enters into the agency contract; or

(c) furnish anything of value to any individual other than the student-athlete or another registered athlete agent.

(2) An athlete agent may not intentionally:

(a) initiate contact with a student-athlete unless registered under [sections 1 through 20];

(b) refuse or fail to retain or permit inspection of the records required to be retained by [section 13];

(c) fail to register when required by [section 4];

(d) provide materially false or misleading information in an application for registration or renewal of registration;

(e) predate or postdate an agency contract; or

(f) fail to notify a student-athlete before the student-athlete signs or otherwise authenticates an agency contract for a particular sport that the signing or authentication may make the student-athlete ineligible to participate as a student-athlete in that sport.

**Section 15. Criminal penalties.** An athlete agent who violates the provisions of [section 14] is guilty of a misdemeanor and may be imprisoned for a period not to exceed 1 year and may be fined up to \$5,000, or both.

**Section 16. Civil remedies.** (1) An educational institution has a right of action against an athlete agent or a former student-athlete for damages caused by a violation of [sections 1 through 20]. In an action under this section, the court may award to the prevailing party costs and reasonable attorney fees.

(2) Damages of an educational institution under subsection (1) include losses and expenses incurred because, as a result of the conduct of an athlete agent or former student-athlete, the educational institution was injured by a violation of [sections 1 through 20] or was penalized, disqualified, or suspended from participation in athletics by a national association for the promotion and regulation of athletics, by an athletic conference, or by reasonable self-imposed disciplinary action taken to mitigate sanctions likely to be imposed by a national organization or athletic conference.

(3) A right of action under this section does not accrue until the educational institution discovers or by the exercise of reasonable diligence should have discovered the violation by the athlete agent or former student-athlete.

(4) Any liability of the athlete agent or the former student-athlete under this section is several and not joint.

(5) [Sections 1 through 20] are not intended to restrict any other rights, remedies, or defenses that a person may otherwise have under law or equity.

**Section 17. Administrative penalty.** The department may assess a civil penalty against an athlete agent not to exceed \$25,000 for a violation of [sections 1 through 20].

**Section 18. Uniformity of application and construction.** In applying and construing [sections 1 through 20], consideration must be given to the need to promote uniformity of the law with respect to the subject matter of [sections 1 through 20] among the states adopting provisions similar to Montana's Uniform Athlete Agents Act.

**Section 19. Electronic signatures.** The provisions of [sections 1 through 20] governing the legal effect, validity, or enforceability of electronic records or signatures, and of contracts formed or performed with the use of electronic records or signatures conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act, Public Law 106-229, 114 Stat. 464.

**Section 20. Rulemaking authority.** The department may establish rules to administer and enforce [sections 1 through 20].

**Section 21.** Section 37-1-401, MCA, is amended to read:

**“37-1-401. Uniform regulation for licensing programs without boards — definitions.** As used in this part, the following definitions apply:

(1) “Complaint” means a written allegation filed with the department that, if true, warrants an injunction, disciplinary action against a licensee, or denial of an application submitted by a license applicant.

(2) “Department” means the department of labor and industry provided for in 2-15-1701.

(3) “Investigation” means the inquiry, analysis, audit, or other pursuit of information by the department, with respect to a complaint or other information before the department, that is carried out for the purpose of determining:

(a) whether a person has violated a provision of law justifying discipline against the person;

(b) the status of compliance with a stipulation or order of the department;

(c) whether a license should be granted, denied, or conditionally issued; or

(d) whether the department should seek an injunction.

(4) “License” means permission in the form of a license, permit, endorsement, certificate, recognition, or registration granted by the state of Montana to engage in a business activity or practice at a specific level in a profession or occupation governed by:

(a) Title 37, chapter 35 or 72, or [sections 1 through 20]; or

(b) Title 50, chapter 39, 74, or 76.

(5) “Profession” or “occupation” means a profession or occupation regulated by the department under the provisions of:

(a) Title 37, chapter 35 or 72, or [sections 1 through 20]; or

(b) Title 50, chapter 39, 74, or 76.”

**Section 22. Codification instruction.** [Sections 1 through 20] are intended to be codified as an integral part of Title 37, and the provisions of Title 37 apply to [sections 1 through 20].

**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.

Approved April 17, 2003

## CHAPTER NO. 411

[SB 307]

AN ACT REVISING SCHOOL DISTRICT INVESTMENT LAWS; ELIMINATING THE REQUIREMENT FOR A SCHOOL DISTRICT TO ESTABLISH A SEPARATE INVESTMENT ACCOUNT FOR EACH FUND; REQUIRING THAT ONLY DEBT SERVICE FUNDS MUST BE COLLECTED BY A COUNTY TREASURER AND REPORTED TO A SCHOOL DISTRICT; AND AMENDING SECTION 20-9-235, MCA.

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

**Section 1.** Section 20-9-235, MCA, is amended to read:

**"20-9-235. Authorization for school district investment account.** (1) The trustees of a school district may establish investment accounts and may temporarily transfer into the accounts all or a portion of any of its budgeted or nonbudgeted funds. ~~The trustees shall establish a separate account for each fund from which transfers are made.~~

(2) Money transferred into investment accounts established under this section may be expended from a subsidiary checking account under the conditions specified in subsection (3)(b).

(3) The district may either:

(a) establish and use the accounts as nonspending accounts to ensure that district funds remain in an interest-bearing status until money is reverted to the budgeted or nonbudgeted fund of original deposit as necessary for use by the county treasurer to pay claims against the district. The district shall ensure that sufficient money is reverted to the district's budgeted and nonbudgeted funds maintained by the county treasurer in sufficient time to pay all claims presented against the applicable funds of the district. The county treasurer shall accept all money that is reverted upon tendered transfer of the district.

(b) establish a subsidiary checking account for expenditures from the investment accounts. The district may write checks on or provide electronic payments from the account if:

(i) the payments made from the accounts representing budgeted funds are in compliance with the budget adopted by the trustees;

(ii) the accounts are subject to the audit of district finances completed for compliance with 2-7-503 and 20-9-503; and

(iii) the district complies with all accounting system requirements required by the superintendent of public instruction.

(4) (a) A district that chooses to establish a school district investment account described in this section shall enter into a written agreement with the county treasurer. The agreement must:

(i) establish specific procedures and reporting dates to comply with the requirements of subsection (3);

~~(ii) be binding upon the district and the county treasurer for a period of not less than 5 years;~~

*(ii) be binding upon the district and the county treasurer for a negotiated period of time;*

~~(iii) (iii) be signed by the presiding officer of the board of trustees and the county treasurer; and~~

~~(iv) (iv) except as provided in subsection (4)(b), coincide with fiscal years beginning on July 1 and ending on June 30.~~

(b) An agreement that establishes a school district investment account for fiscal year 2002 must be entered into no later than October 1, 2001.

(c) The district and the county treasurer may renew an agreement, including terms and conditions on which they agree, provided that the terms and conditions comply with the provisions of this section.

~~(5) Except for electronic transfers of BASE aid and state advances for county equalization debt service money that the county treasurer is required by law to collect and report to the districts, all other revenue may be sent directly to a participating district's investment account under 20-9-346(3), the county treasurer shall, as required by law, continue to collect money and report to the districts that elect to establish a school district investment account.~~

(6) The trustees shall implement an accounting system for the investment account pursuant to rules adopted by the superintendent of public instruction. The rules for the accounting system must include but are not limited to:

(a) providing for the internal control of deposits into and transfers between a district's investment accounts and budgeted and nonbudgeted funds of the district;

(b) requiring that the principal and interest earned on the principal is allocated to the budgeted or nonbudgeted fund from which the deposit was originally made; and

(c) ensuring that other proper accounting principles are followed.

(7) All interest earned on the district's general fund deposits must be allocated for district property tax reduction as required by 20-9-141.

(8) In making deposits to investment accounts under this section, a district shall comply with the requirements of Title 17, chapter 6, part 1, with respect to deposits in excess of the amount insured by the federal deposit insurance corporation or the national credit union administration, as applicable.

(9) A district establishing investment accounts under the section shall pay the automated clearinghouse system charges for all automated clearinghouse transfers made by the office of public instruction to the district's accounts."

Approved April 18, 2003

## CHAPTER NO. 412

[SB 389]

AN ACT PROVIDING AN ALTERNATIVE DISPUTE RESOLUTION PROCEDURE FOR RESIDENTIAL CONSTRUCTION DISPUTES; REQUIRING A CLAIMANT WITH AN ALLEGED CONSTRUCTION DEFECT TO FILE A NOTICE OF CLAIM WITH THE CONSTRUCTION

PROFESSIONAL THAT THE CLAIMANT ASSERTS IS RESPONSIBLE FOR THE DEFECT AND PROVIDING THE CONSTRUCTION PROFESSIONAL WITH THE OPPORTUNITY TO RESOLVE THE CLAIM WITHOUT LITIGATION; LIMITING DAMAGES THAT CAN BE RECOVERED IN RESIDENTIAL CONSTRUCTION DISPUTES; AND AMENDING SECTION 27-2-208, MCA.

WHEREAS, the Legislature finds that Montana needs an alternative method to resolve legitimate construction disputes that would reduce the need for litigation while adequately protecting the rights of homeowners; and

WHEREAS, the Legislature determines that an effective alternative dispute resolution mechanism in certain construction defect matters should require the claimant to file a notice of claim with the construction professional that the claimant asserts is responsible for the defect and providing the construction professional with the opportunity to resolve the claim without litigation.

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

**Section 1. Residential construction disputes — definitions.** As used in [sections 1 through 3], the following definitions apply:

(1) (a) “Action” means any civil lawsuit or action in contract or tort for damage or indemnity brought against a construction professional to assert a claim, whether by complaint, counterclaim, or cross-claim, for damage or the loss of use of real or personal property caused by a defect in the construction or remodeling of a residence.

(b) The term does not include a civil action in tort alleging personal injury or wrongful death to a person or persons resulting from a construction defect.

(2) “Association” means a unit owners’ organization or a nonprofit corporation created to own and operate portions of a planned community that has the power to require unit owners to pay the costs and expenses incurred in the performance of the association’s obligations.

(3) “Claimant” means a homeowner or association that asserts a claim against a construction professional concerning a defect in the construction or remodeling of a residence.

(4) “Construction defect” means a deficiency in or arising out of the supervision, construction, or remodeling of a residence that results from any of the following:

(a) defective materials, products, or components used in the construction or remodeling of a residence;

(b) violation of the applicable building, plumbing, or electrical codes in effect at the time of the construction or remodeling of a residence;

(c) failure to construct or remodel a residence in accordance with contract specifications or accepted trade standards.

(5) “Construction professional” means a builder, builder vendor, contractor, or subcontractor performing or furnishing the supervision of the construction or remodeling of any improvement to real property, whether operating as a sole proprietor, partnership, corporation, or other business entity.

(6) (a) “Homeowner” means:

(i) any person, company, firm, partnership, corporation, or association who contracts with a construction professional for the remodeling, construction, or construction and sale of a residence; or

(ii) an association as defined in this section.

(b) The term homeowner includes but is not limited to a subsequent purchaser of a residence from any homeowner.

(7) "Residence" means a single-family house or a unit in a multiunit residential structure in which title to each individual unit is transferred to the owner under a condominium or cooperative system.

(8) "Serve" or "service" means personal service or delivery by certified mail to the last-known address of the addressee.

**Section 2. Residential construction disputes — notice and opportunity to repair — tolling of statute of limitations — presumption of compliance with construction standards.** (1) Prior to commencing an action against a construction professional for a construction defect, the claimant shall serve written notice of claim on the construction professional. The notice of claim must state that the claimant asserts a construction defect claim against the construction professional and must describe the claim in reasonable detail sufficient to determine the general nature of the defect. If a written notice of claim is served under this section within the time prescribed for the filing of an action under 27-2-208, the statute of limitations for construction defect claims is tolled.

(2) Within 21 days after service of the notice of claim, the construction professional shall serve a written response on the claimant. The written response must:

(a) propose to inspect the residence that is the subject of the claim and to complete the inspection within a specified timeframe. The proposal must include the statement that the construction professional shall, based on the inspection, offer to remedy the defect, compromise by payment, or dispute the claim;

(b) offer to compromise and settle the claim by monetary payment without inspection; or

(c) state that the construction professional disputes the claim and will neither remedy the construction defect nor compromise and settle the claim.

(3) (a) If the construction professional disputes the claim or does not respond to the claimant's notice of claim within the time stated in subsection (2), the claimant may bring an action against the construction professional for the claim described in the notice of claim without further notice.

(b) If the claimant rejects the inspection proposal or the settlement offer made by the construction professional pursuant to subsection (2), the claimant shall serve written notice of the claimant's rejection on the construction professional. After service of the notice of rejection, the claimant may bring an action against the construction professional for the construction defect claim described in the notice of claim. If the construction professional has not received from the claimant, within 30 days after the claimant's receipt of the construction professional's response, either an acceptance or rejection of the inspection proposal or settlement offer, then at any time after that date the construction professional may terminate the proposal or offer by serving written notice on the claimant. The claimant may, after service, bring an action against the

construction professional for the construction defect claim described in the notice of claim.

(4) (a) If the claimant elects to allow the construction professional to inspect in accordance with the construction professional's proposal pursuant to subsection (2)(a), the claimant shall provide the construction professional and its contractors or other agents reasonable access to the claimant's residence, as agreed by the parties, to inspect the premises and the claimed defect.

(b) Within 14 days following completion of the inspection, the construction professional shall serve on the claimant:

(i) a written offer to remedy the construction defect at no cost to the claimant, including a report of the scope of the inspection, the findings and results of the inspection, a description of the additional construction necessary to remedy the defect described in the claim, and a timetable for the completion of the construction;

(ii) a written offer to compromise and settle the claim by monetary payment pursuant to subsection (2)(b);

(iii) a written offer to remedy the claim through a combination of repair and monetary payment pursuant to subsection (2)(b); or

(iv) a written statement setting forth the reasons why the construction professional will not proceed further to remedy the alleged defect.

(c) If the construction professional does not proceed further to remedy the alleged construction defect within the agreed-upon time or if the construction professional fails to comply with the provisions of subsection (4)(b), the claimant may bring an action against the construction professional for the claim described in the notice of claim without further notice.

(d) If the claimant rejects the offer made by the construction professional pursuant to subsection (4)(b)(i) or (4)(b)(ii) to either remedy the construction defect or to compromise and settle the claim by monetary payment, the claimant shall serve written notice of the claimant's rejection on the construction professional. After service of the rejection notice, the claimant may bring an action against the construction professional for the construction defect claim described in the notice of claim. If the construction professional has not received from the claimant, within 30 days after the claimant's receipt of the construction professional's response, either an acceptance or rejection of the offer made pursuant to subsection (4)(b)(i) or (4)(b)(ii), then at any time after that date the construction professional may terminate the offer by serving written notice on the claimant.

(5) (a) Any claimant accepting the offer of a construction professional to remedy the construction defect pursuant to subsection (4)(b)(i) or (4)(b)(iii) shall do so by serving the construction professional with a written notice of acceptance within 30 days after receipt of the offer. The claimant shall provide the construction professional and its contractors or other agents reasonable access to the claimant's residence during normal working hours to perform and complete the construction according to the timetable stated in the offer.

(b) The claimant and construction professional may, by written mutual agreement, alter the extent of construction or the timetable for completion of construction stated in the offer, including but not limited to repair of additional defects.



(6) Subsequently discovered claims of construction defects must be administered separately under this section and [section 3], unless otherwise agreed to by the parties.

(7) This section may not be construed to prevent a claimant from commencing an action on the construction defect claim described in the notice of claim if the construction professional fails to perform the construction agreed upon, fails to remedy the defect, or fails to perform within the time agreed upon pursuant to subsection (4)(b) or (5)(b).

(8) This section may not be enforced unless the homeowner has been given written notice of the requirements of [sections 1 through 3].

**Section 3. Construction defect disputes — damages.** (1) In a suit subject to [section 2] and this section, the claimant may recover only the following damages proximately caused by a construction defect:

(a) the reasonable cost of repairs necessary to cure any construction defect, including any reasonable and necessary engineering or consulting fees required to evaluate and cure the construction defect, that the contractor is responsible for repairing under [section 2];

(b) the reasonably necessary expenses of temporary housing during the repair period;

(c) the reduction in market value, if any, to the extent the reduction is due to a construction defect; and

(d) reasonable costs and attorney fees.

(2) [Sections 1 through 3] do not supersede contractual alternative dispute resolution procedures contained in a contract between a claimant and a construction professional.

**Section 4.** Section 27-2-208, MCA, is amended to read:

**“27-2-208. Actions for damages arising out of work on improvements to real property or land surveying.** (1) Except as provided in [section 2(1)] and subsections (2) and (3) of this section, an action to recover damages (other than an action upon any contract, obligation, or liability founded upon an instrument in writing) resulting from or arising out of the design, planning, supervision, inspection, construction, or observation of construction of any improvement to real property or resulting from or arising out of land surveying of real property may not be commenced more than 10 years after completion of the improvement or land surveying.

(2) Notwithstanding the provisions of subsection (1), an action for damages for an injury that occurred during the 10th year after the completion of the improvement or land surveying may be commenced within 1 year after the occurrence of the injury.

(3) The limitation prescribed by this section may not affect the responsibility of any owner, tenant, or person in actual possession and control of the improvement or real property that is surveyed at the time a right of action arises.

(4) As used in this section:

(a) “completion” means that degree of completion at which the owner can utilize the improvement for the purpose for which it was intended or when a completion certificate is executed, whichever is earlier;

(b) "land surveying" means the practice of land surveying, as defined in 37-67-101.

(5) This section may not be construed as extending the period prescribed by the laws of this state for the bringing of any action."

**Section 5. Codification instruction.** [Sections 1 through 3] are intended to be codified as an integral part of Title 70, chapter 19, part 4, and the provisions of Title 70, chapter 19, part 4, apply to [sections 1 through 3].

**Section 6. 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 7. 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 April 17, 2003

## CHAPTER NO. 413

[SB 449]

AN ACT REVISING THE FETAL, INFANT, AND CHILD MORTALITY PREVENTION ACT; ALLOWING COUNTIES AND TRIBAL GOVERNMENTS TO COOPERATE TO ALLOW TEAMS TO REVIEW ALL FETAL, INFANT, AND CHILD DEATHS; REVISING CONFIDENTIALITY AND DISCLOSURE PROVISIONS RELATED TO FETAL, INFANT, AND CHILD MORTALITY REVIEW TEAMS; AND AMENDING SECTIONS 50-19-402, 50-19-403, 50-19-404, 50-19-405, AND 50-19-406, MCA.

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

**Section 1.** Section 50-19-402, MCA, is amended to read:

**"50-19-402. Statement of policy — access to information.** (1) The prevention of fetal, infant, and child deaths is both the policy of the state of Montana and a community responsibility. Many community professionals have expertise that can be used to promote the health, safety, and welfare of fetuses, infants, and children. The use of these professionals in reviewing fetal, infant, and child deaths can lead to a greater understanding of the causes of death and the methods of preventing deaths. It is the intent of the legislature to encourage local communities to establish voluntary multidisciplinary fetal, infant, and child mortality review teams to study the incidence and causes of fetal, infant, and child deaths *and make recommendations for community or statewide change, if appropriate, that may help prevent future deaths.*

(2) A health care provider may disclose information about a patient without the patient's authorization or without the authorization of the representative of a patient who is deceased upon request of a local fetal, infant, and child mortality review team. The review team may request and may receive information from a county attorney as provided in 44-5-303(4), *from a tribal attorney*, and from a health care provider as provided in 50-16-525 after the review team has considered whether the disclosure of the information by the provider satisfies the criteria provided in 50-16-529(6). The review team shall maintain the confidentiality of the information received.

(3) The local fetal, infant, and child mortality review team may ~~only~~:

(a) *perform an in-depth analysis of fetal, infant, and child deaths, including a review of records available by law;*

~~(a)~~(b) *compile statistics of fetal, infant, and child mortality and communicate the statistics to the department of public health and human services for inclusion in statistical reports;*

~~(b)~~(c) *analyze the preventable causes of fetal, infant, and child deaths, including child abuse and neglect; and*

~~(c)~~(d) *recommend measures to prevent future fetal, infant, and child deaths.*

(4) *A local fetal, infant, and child mortality review team may not review deaths of fetuses, infants, or children who are Indians and which deaths occur within the boundaries of an Indian reservation with a tribal government that opposes the review."*

**Section 2.** Section 50-19-403, MCA, is amended to read:

**"50-19-403. Local fetal, infant, and child mortality review team.** (1) A local fetal, infant, and child mortality review team must be approved by the ~~county health~~ department of public health and human services. Approval ~~must~~ may be given if:

(a) *the county health department, a tribal health department, if the tribal government agrees, or both are represented on the team and the plan provided for in subsection (1)(d) includes the roles of the county health department, tribal health department, or both;*

(b) ~~has designated~~ *a lead person has been designated for the purposes of management of the review team;*

~~(b)~~(c) *at least five of the individuals listed in subsection (2) have agreed to serve on the review team; and*

~~(c)~~(d) ~~the five individuals have developed~~ *a plan has been developed by the team that includes, at a minimum, operating policies of the review team covering collection and destruction of information obtained pursuant to 44-5-303(4) or 50-19-402(2).*

(2) If a local fetal, infant, and child mortality review team is established, the team must be multidisciplinary and may include only:

(a) *the county attorney or a designee;*

(b) *a law enforcement officer;*

(c) *the medical examiner or coroner for the jurisdiction;*

(d) *a physician;*

(e) *a school district representative;*

(f) *a representative of the local health department;*

(g) *a representative from a tribal health department, appointed by the tribal government;*

(h) *a representative from a neighboring county or tribal government, if there is an agreement to review deaths for that county or tribe;*

~~(g)~~(i) *a representative of the department of public health and human services;*

~~(h)~~(j) *a forensic pathologist;*

- ~~(j)~~(k) a pediatrician;
- ~~(i)~~(l) a family practice physician;
- ~~(k)~~(m) an obstetrician;
- ~~(j)~~(n) a nurse practitioner;
- ~~(m)~~(o) a public health nurse;
- ~~(n)~~(p) a mental health professional;
- ~~(o)~~(q) a local trauma coordinator;

~~(p) a representative, appointed by the tribal government, of an Indian reservation that is located in whole or in part within the boundaries of the county;~~

~~(q)~~(r) a representative of the bureau of Indian affairs or the Indian health service, or both, who is located within the county; and

~~(r)~~(s) representatives of the following:

- (i) local emergency medical services;
- (ii) a local hospital;
- (iii) a local hospital medical records department;
- (iv) a local fire department; and
- (v) the local registrar.

*(3) The designated lead person for the team shall submit membership lists to the department of public health and human services annually."*

**Section 3.** Section 50-19-404, MCA, is amended to read:

**"50-19-404. Records — confidentiality.** Material and information obtained by a local fetal, infant, and child mortality review team are not subject to disclosure under the public records law. Material and information obtained by a local fetal, infant, and child mortality review team are not subject to subpoena unless the material and information are reviewed by a district court judge and ordered to be provided to the person seeking access."

**Section 4.** Section 50-19-405, MCA, is amended to read:

**"50-19-405. Unauthorized disclosure by review team member — civil penalty.** A person aggrieved by the use of information obtained pursuant to 50-19-402(2) for a purpose not authorized by 50-19-402(3) or by a disclosure of that information in violation of 50-19-402(2) ~~by a member of a local fetal, infant, and child mortality review team~~ may bring a civil action in the district court of the county of the person's residence for damages, costs, and fees as provided in 50-16-553(6) through (8)."

**Section 5.** Section 50-19-406, MCA, is amended to read:

**"50-19-406. Unauthorized disclosure by review team member — misdemeanor.** ~~A member of a local fetal, infant, and child mortality review team~~ A person who knowingly uses information obtained pursuant to 50-19-402(2) for a purpose not authorized by 50-19-402(3) or who discloses that information in violation of 50-19-402(2) is guilty of a misdemeanor and upon conviction is punishable as provided in 50-16-551."

**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 band of Chippewa.

Approved April 17, 2003

## CHAPTER NO. 414

[HB 155]

AN ACT GENERALLY UPDATING AND REVISING PROVISIONS ON VOTING SYSTEM TECHNOLOGIES, BALLOT FORMATS, AND VOTE COUNTING; SPECIFYING UNIFORM STANDARDS FOR THE SECRETARY OF STATE'S APPROVAL OF A VOTING SYSTEM FOR USE IN THE STATE; REQUIRING THE SECRETARY OF STATE TO ADOPT UNIFORM STATEWIDE RULES; REQUIRING ELECTION ADMINISTRATORS TO COLLECT AND REPORT CERTAIN DATA; PROVIDING UNIFORM PROCEDURES ON HOW VOTES ARE COUNTED; CLARIFYING TRAINING REQUIREMENTS FOR ELECTION ADMINISTRATORS AND ELECTION JUDGES; CLARIFYING THE APPLICATION OF CERTAIN ELECTION LAWS TO SCHOOL ELECTION AND SCHOOL ELECTION ADMINISTRATORS; AMENDING SECTIONS 13-1-101, 13-1-103, 13-1-202, 13-1-203, 13-3-105, 13-4-101, 13-4-102, 13-4-203, 13-10-204, 13-10-208, 13-10-209, 13-10-211, 13-10-301, 13-10-302, 13-10-303, 13-10-311, 13-12-201, 13-12-202, 13-12-203, 13-12-204, 13-12-205, 13-12-212, 13-13-111, 13-13-112, 13-13-115, 13-13-116, 13-13-117, 13-13-201, 13-13-203, 13-13-205, 13-13-211, 13-13-212, 13-13-214, 13-13-222, 13-13-229, 13-13-231, 13-13-232, 13-13-233, 13-13-234, 13-13-241, 13-13-244, 13-14-115, 13-14-116, 13-14-117, 13-14-118, 13-14-212, 13-15-101, 13-15-103, 13-15-104, 13-15-105, 13-15-201, 13-16-201, 13-16-303, 13-16-411, 13-16-412, 13-16-414, 13-16-417, 13-16-420, 13-17-101, 13-17-102, 13-17-103, 13-17-104, 13-17-105, 13-17-106, 13-17-107, 13-17-201, 13-17-203, 13-17-204, 13-17-206, 13-17-305, 13-17-306, 13-19-106, 13-19-309, 13-19-312, 13-19-314, 13-25-101, 13-27-501, 13-27-502, 13-35-202, 13-35-205, 13-35-206, 13-37-126, 13-37-250, 13-38-201, 20-20-421, AND 76-15-303, MCA; AND REPEALING SECTIONS 13-12-208, 13-12-209, 13-13-221, 13-15-202, 13-16-413, AND 13-17-301, MCA.

WHEREAS, the U.S. Supreme Court in *Bush v. Gore*, 531 U.S. 98 (2000), found that the lack of uniform procedures for determining voter intent in Florida during the 2000 presidential election led to a violation of the U.S. Constitution's Equal Protection Clause of the 14th Amendment; and

WHEREAS, at the request of the 57th Legislature, the State Administration and Veterans' Affairs Interim Committee devoted much of the 2001-2002 interim to a review of Montana election laws with respect to voting systems and counting processes in light of *Bush v. Gore*; and

WHEREAS, the interim study found that Montana's statutory provisions relating to ballots, voting systems, and vote counting processes needed to be updated, clarified, and in some instances revised to better define uniform standards and procedures to provide equal protection for votes cast by Montana voters; and

WHEREAS, the Subcommittee on Voting Systems of the State Administration and Veterans' Affairs Interim Committee agreed that statutory

changes should be made with an eye on future technology but should also standardize current practices to the greatest extent possible.

THEREFORE, this legislation will enable the Secretary of State to adopt a statewide benchmark performance measure that voting systems must meet before they can be approved for use in the state; allow local election administrators to continue to choose which of the approved voting systems should be used locally; require the Secretary of State to adopt uniform statewide rules regarding ballot form, votes and vote counts, and other operational procedures specific to each voting system and to provide training to local election administrators; and require all counting boards to use the uniform counting procedures specified.

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

**Section 1. Appointment of counting boards.** To count votes in any election under this title, when election judges are appointed under 13-4-101, each county's governing body shall designate three of the election judges to act as a counting board. The governing body may also designate three of the election judges to act as an absentee ballot counting board under 13-15-104.

**Section 2. Counting votes — uniformity — rulemaking — definitions.** (1) When conducting vote counts as provided by law, a counting board, absentee ballot counting board, or recount board shall count and determine the validity of each vote in a uniform manner as provided in this section.

(2) A manual count of votes cast on a paper ballot must be conducted as follows:

(a) One election judge on the board shall read the ballot while the two other judges on the board shall each record on an official tally sheet the number of valid votes cast for each individual or ballot issue. Write-in votes must be counted in accordance with rules adopted pursuant to subsection (7). If a vote has not been cast according to instructions, the entire ballot must be set aside and counted as provided in subsection (4).

(b) (i) After the vote count is complete, the tally sheets of the two judges recording the votes must be compared.

(ii) If the two tallies match, the judges shall record in the pollbook:

(A) the names of all individuals who received votes;

(B) the offices for which individuals received votes;

(C) the total votes received by each individual as shown by the tally sheets; and

(D) the total votes received for or against each ballot issue, if any.

(iii) If the tallies do not match, the count must be conducted again as provided in this subsection (2) until the two tallies match.

(3) (a) Except as provided in subsection (3)(b):

(i) if a vote on a paper ballot or nonpaper ballot is recognized and counted by the system, it is a valid vote;

(ii) if a vote on a paper ballot or nonpaper ballot is not recognized and counted by the system, it is not a valid vote;

(iii) write-in votes must be counted in accordance with rules adopted pursuant to subsection (7).

(b) (i) If a paper ballot being counted by a voting system is rejected by the system or if the system records an overvote or undervote on a ballot, the ballot must be set aside and counted as provided in subsection (4).

(ii) If an election administrator determines that a voting system is not functioning correctly, the election administrator shall follow the procedures prescribed in 13-16-414.

(c) After all valid votes have been counted and totaled pursuant to subsection (4) and this subsection (3), the judges shall record in the pollbook the information specified in subsection (2)(b)(ii).

(4) (a) Each questionable vote on a paper ballot set aside under subsection (2)(a) or (3)(b) must be counted if the voter's intent can be clearly determined and agreed upon by a majority of the election judges on the counting board in accordance with rules adopted pursuant to subsection (7).

(b) After each questionable vote on a ballot set aside under subsection (2)(a) or (3)(b) has been determined to be a valid vote, an invalid vote, or an intentional nonvote, the valid votes must be counted manually or automatically tabulated by the voting system. If the votes are to be counted manually, the votes must be tallied as provided in subsection (2). If the votes are to be counted using a voting system, all valid votes must be transferred to a ballot that will be accepted by the voting system and tabulated as provided in subsection (3).

(c) Votes counted pursuant to this subsection (4) and the votes initially counted under subsections (2) and (3) must be totaled.

(5) A write-in vote may be counted only if the write-in vote identifies an individual by a designation filed pursuant to 13-10-211(1)(a).

(6) A vote is not valid and may not be counted if the elector's choice cannot be determined as provided in this section.

(7) The secretary of state shall adopt rules defining a valid vote and a valid write-in vote for each type of ballot and for each type of voting system used in the state. The rules must provide a sufficient guarantee that all votes are treated equally among jurisdictions using similar ballot types and voting systems.

(8) Local election administrators shall adopt policies to govern local processes that are consistent with the provisions of this title and that provide for:

- (a) the security of the counting process against fraud;
- (b) the place and time and public notice of each count or recount;
- (c) public observance of each count or recount, including observance by representatives authorized under 13-16-411;
- (d) the recording of objections to determinations on the validity of an individual vote or to the entire counting process; and
- (e) the keeping of a public record of count or recount proceedings.

(9) For purposes of this section:

(a) "overvote" means an elector's vote that has been interpreted by the voting system as an elector casting more votes than allowable for a particular office or ballot issue; and

(b) "undervote" means an elector's vote that has been interpreted by the voting system as a nonvote.

**Section 3. Uniform procedures for using voting systems.** (1) For each voting system approved under 13-17-101, the secretary of state shall adopt rules specifying the procedures to be uniformly applied in elections conducted with the voting system.

(2) The rules must, at a minimum, specify procedures that address the following:

- (a) performance certification under [section 4];
- (b) how electors ensure the proper disposition of a ballot pursuant to 13-13-117(2);
- (c) the process to be used to prepare for a vote count under 13-10-311(3) and 13-15-201(2) for nonpaper ballots so that election judges can determine the total number of electors voting in the election compared to the total number of ballots cast;
- (d) the procedures to be followed if the comparison under [section 2(2)(b)] reveals discrepancies;
- (e) recount procedures under 13-16-412(2);
- (f) voting system tests to correct discrepancies under 13-16-414(1)(a);
- (g) what contingencies must be made for recounts pursuant to 13-16-414(3)(b);
- (h) the security measures necessary to secure the voting system before, during, and after an election, including security following a recount under 13-16-417; and
- (i) testing and certification of voting systems pursuant to [section 4].

**Section 4. Performance certification of voting systems prior to election.** No more than 30 days prior to an election in which a voting system is used, the election administrator shall test and certify that the system is performing properly. The test and certification must be conducted according to rules adopted by the secretary of state pursuant to [section 3].

**Section 5.** 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 a qualified elector whose name is on the active list.
- (2) “Active list” means a list of active electors maintained by an election administrator pursuant to 13-2-219.
- (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 completed voter registration card submitted to the election administrator and subject to confirmation, as provided in 13-2-207.
- (5) “Ballot” means:
  - (a) a paper ballot used with a paper-based system, such as an optical scan system[, a punchcard voting system,] or other technology that automatically tabulates votes cast by processing the paper ballots; or
  - (b) a nonpaper ballot, such as a ballot used with a nonpaper-based system, such as a lever machine, a direct recording electronic machine, or other technology.



~~(5)~~(6) "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; and
- (c) an officeholder who is the subject of a recall election.

~~(6)~~(7) (a) "Contribution" means:

(i) an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to influence an election;

(ii) a transfer of funds between political committees;

(iii) 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:

(i) 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 residence for a candidate or other individual;

(ii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation;

(iii) the cost of any communication by any membership organization or corporation to its members or stockholders or employees; or

(iv) filing fees paid by the candidate.

~~(7)~~(8) "Election" means a general, regular, special, or primary election held pursuant to the requirements of state law, regardless of the time or purpose.

~~(8)~~(9) "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, the term means the school district clerk.

~~(9)~~(10) "Elector" means an individual qualified and registered to vote under state law.

~~(10)~~(11) (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value made for the purpose of influencing the results of an election.

(b) "Expenditure" does not mean:

(i) services, food, or lodging provided in a manner that they are not contributions under subsection ~~(6)~~ (7);

(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, 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.

~~(11)~~ (12) "Federal election" means a general or primary election in which an elector may vote for individuals for the office of president of the United States or for the United States congress.

~~(12)~~ (13) "General election" or "regular election" means an election held for the election of public officers throughout the state at times specified by law, including elections for officers of political subdivisions when the time of the election is set on the same date for all similar political subdivisions in the state. For ballot issues required by Article III, section 6, or Article XIV, section 8, of the Montana constitution to be submitted by the legislature to the electors at a general election, "general election" means an election held at the time provided in 13-1-104(1). For ballot issues required by Article XIV, section 9, of the Montana constitution to be submitted as a constitutional initiative at a regular election, regular election means an election held at the time provided in 13-1-104(1).

~~(13)~~ (14) "Inactive elector" means an individual whose name is placed on an inactive list.

~~(14)~~ (15) "Inactive list" means a list of inactive electors maintained by an election administrator pursuant to 13-2-219.

~~(15)~~ (16) "Individual" means a human being.

~~(16)~~ (17) "Issue" or "ballot issue" means a proposal submitted to the people at an election for their approval or rejection, including but not limited to initiatives, referenda, proposed constitutional amendments, recall questions, school levy questions, bond issue questions, or a ballot question. 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 upon the ballot has been completed, except that a statewide issue becomes a "ballot issue" upon approval by the secretary of state of the form of the petition or referral.

~~(17)~~ (18) "Person" means an individual, corporation, association, firm, partnership, cooperative, committee, club, union, or other organization or group of individuals or a candidate as defined in subsection ~~(5)~~ (6).

~~(18)~~ (19) "Political committee" means a combination of two or more individuals or a person other than an individual who makes a contribution or expenditure:

(a) to support or oppose a candidate or a committee organized to support or oppose a candidate or a petition for nomination; or

(b) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or

(c) as an earmarked contribution.

~~(19)~~(20) "Political subdivision" means a county, consolidated municipal-county government, municipality, special district, or any other unit of government, except school districts, having authority to hold an election for officers or on a ballot issue.

~~(20)~~(21) "Primary" or "primary election" means an election held throughout the state to nominate candidates for public office at times specified by law, including nominations of candidates for offices of political subdivisions when the time for nominations is set on the same date for all similar subdivisions in the state.

~~(21)~~(22) "Public office" means a state, county, municipal, school, or other district office that is filled by the people at an election.

~~(22)~~(23) "Registrar" means the county election administrator and any regularly appointed deputy or assistant election administrator.

~~(23)~~(24) "Special election" means an election other than a statutorily scheduled primary or general election held at any time for any purpose provided by law. It may be held in conjunction with a statutorily scheduled election.

(25) "Valid vote" means a vote that has been counted as valid or determined to be valid as provided in [section 2].

~~(24)~~(26) "Voting machine or device system" or "system" means any machine, device, technology, or equipment used to automatically record, tabulate, or in any manner process the vote of an elector cast on a paper or nonpaper ballot."

**Section 6.** Section 13-1-103, MCA, is amended to read:

**"13-1-103. Determination of winner.** The individual receiving the highest number of *valid* votes for any office at an election is elected or nominated to that office."

**Section 7.** Section 13-1-202, MCA, is amended to read:

**"13-1-202. Forms and rules prescribed by chief election officer secretary of state — consultation.** (1) In carrying out ~~his~~ the responsibilities under 13-1-201, the secretary of state shall prepare and deliver to the election administrators:

(a) written directives and instructions relating to and based on the election laws;

(b) sample copies of prescribed and suggested forms; and

(c) advisory opinions on the effect of election laws other than those laws in ~~chapters~~ chapter 35, 36, or 37 of this title.

(2) The secretary of state may prescribe the design of any election form required by law. ~~He~~ The secretary of state shall ~~must~~ seek the advice of election administrators and printers in designing the required forms.

(3) Each election administrator shall comply with the directives and instructions and shall provide election forms prepared as prescribed.

(4) Each election administrator shall provide data to the secretary of state that the secretary of state determines is necessary to:

(a) evaluate voting system performance against the benchmark standard adopted pursuant to 13-17-103(2);

(b) evaluate the security, accuracy, and accessibility of elections; and

(c) assist the secretary of state in making recommendations to improve voter confidence in the integrity of the election process.

(5) The secretary of state shall regularly consult with and seek the advice of local election administrators in implementing the provisions of this section.”

**Section 8.** Section 13-1-203, MCA, is amended to read:

**“13-1-203. ~~Chief election officer~~ Secretary of state to advise, assist, and train.** (1) The secretary of state shall advise and assist election administrators, including administrators of school elections under Title 20, chapter 20, with regard to:

(a) the application, operation, and interpretation of Title 13, except for chapter 35, 36, or 37, ~~and;~~

(b) the implementation and operation of the National Voter Registration Act of 1993, Public Law 103-31; and

(c) ~~the procedures adopted pursuant to [section 3]. The secretary of state shall hold at least one workshop every 2 years to provide training and assistance to election administrators. Election administrators must be reimbursed, from funds appropriated to the secretary of state, for their mileage and expenses for attending the workshops at the rates set for mileage and expenses in 2-18-501 through 2-18-503. At the discretion of the secretary of state and within the budget limits allowed for workshops, the workshops may be held in several sessions at separate locations in the state.~~

(2) The secretary of state shall prepare and distribute training materials for election judges to be trained pursuant to 13-4-203. Sufficient copies of the materials to supply all election judges in the county and to provide a small extra supply must be sent to each election administrator.

(3) The secretary of state shall hold at least one workshop every 2 years to instruct election administrators and their staffs in use of the materials. Workshops may be held in various locations around the state. Costs of the materials and workshops must be paid by the secretary of state. Attendees of the training must receive a certificate of instruction, which is valid for 2 years.”

**Section 9.** Section 13-3-105, MCA, is amended to read:

**“13-3-105. Designation of polling place.** (1) The county governing body shall designate the polling place for each precinct no later than 30 days before a primary election. The same polling place ~~shall~~ must be used for both the primary and general election if at all possible. Changes may be made by the governing body in designated polling places up to 10 days before an election if a designated polling place is not available. Polling places may be located outside the boundaries of a precinct.

(2) Not more than 10 days or less than 2 days before an election, the election administrator shall publish in a newspaper of general circulation in the county, a statement of the locations of the precinct polling places. The election administrator shall include in the published notice the accessibility designation for each polling place according to the classification in 13-3-207. Notice may also be given as provided in 2-3-105 through 2-3-107.

(3) An election administrator may make changes in the location of a polling place if an emergency occurs 10 days or less before an election. Notice ~~shall~~ must be posted at both the old and new polling places, and other notice may be given by whatever means available.

(4) Any publicly owned building may be used as a polling place. ~~Such~~ The building must be furnished at no charge as long as no structural changes are required in order to use the building as a polling place.

(5) *The exterior of the voting systems, or of the booths in which they are placed, and every part of the polling place must be in plain view of the election judges.*"

**Section 10.** Section 13-4-101, MCA, is amended to read:

**"13-4-101. Appointment of election judges — ~~other boards of election judges.~~** (1) At least 30 days before the primary election in even-numbered years, the county governing body shall appoint ~~3~~ *three* or more election judges for each precinct, one of whom ~~shall~~ *must* be designated chief judge.

~~(2) A board of election judges, designated as a counting board, may be appointed in any precinct if recommended by the election administrator.~~

~~(3) A board of election judges, designated as a counting board for absentee ballots, may be appointed to count all absentee ballots for all precincts if recommended by the election administrator."~~

**Section 11.** Section 13-4-102, MCA, is amended to read:

**"13-4-102. Manner of choosing election judges.** (1) ~~Election~~ *Subject to 13-4-107, election judges shall* ~~must~~ be chosen from lists of qualified registered electors for each precinct in the county, submitted at least 45 days before the primary election in even-numbered years by the county central committees of the political parties eligible to nominate candidates in the primary.

(2) The list of each party may contain more names than the number of election judges to be appointed. The names of those not appointed as election judges ~~shall~~ *must* be given to the election administrator for use in making appointments to fill vacancies.

(3) Each board of election judges ~~shall contain~~ *must include* judges representing all parties that have submitted lists as provided in subsection (1). No more than ~~the number of election judges needed to obtain a simple~~ majority may be appointed from the list of one political party in each precinct. If any of the political parties entitled to do so fail to submit a list, the governing body shall, insofar as possible, appoint judges so that all parties eligible to participate in the primary are represented on each board.

(4) The election administrator shall make appointments to fill vacancies from the list provided for in subsection (2). If the list is insufficient or if one or more of the eligible political parties fails to submit a list, the election administrator may randomly select, either by manual drawing or by computer, sufficient qualified registered electors in the county to fill election judge vacancies in all precincts.

(5) An elector chosen to potentially serve as an election judge must be notified of selection at least 30 days before the primary election in even-numbered years. Each elector who agrees to serve as an election judge shall attend a training class conducted under 13-4-203 and shall continue to serve as ~~assigned by the election administrator for 2 years provided in 13-4-103."~~

**Section 12.** Section 13-4-203, MCA, is amended to read:

**“13-4-203. Instruction of judges — training materials.** (1) Before each election, all election judges who do not possess a current certificate of instruction ~~shall obtained pursuant to 13-1-203(3) must~~ be instructed by the election administrator. In precincts where voting machines or devices systems are used, instructions ~~shall must~~ cover both ~~machines or devices~~ *how to operate the voting system and how to manually process any paper ballots.*

(2) Chief judges may be required to attend the training session before each election, as well as a special session that may be held for chief judges only, *even if they possess a current certificate of instruction.*

(3) Any individual willing to be appointed as an election judge may attend an instruction session by registering with the election administrator. ~~Such individuals~~ *However, the individual* may not be paid for attendance unless ~~they are the individual~~ *is appointed as an election judge.*

~~(4) The secretary of state shall prepare and distribute training materials for election judges. The materials shall include instructions on the use of all machines or devices approved for use in this state, as well as paper ballots. Enough copies of the materials to supply all election judges in the county and provide a small extra supply shall be sent to each election administrator. The secretary of state shall hold at least one workshop every 2 years to instruct election administrators and their staffs in use of the materials. Workshops may be held in various locations around the state. Costs of the materials and workshops shall be paid by the secretary of state.~~

~~(5)~~(4) Each election judge completing a training session *under this section shall must* be given a certificate of completion. ~~No~~ *An individual may not* serve as an election judge without a valid certificate *obtained under 13-1-203(3) or this section.* However, this does not apply to individuals filling vacancies in emergencies.

~~(6)~~(5) All certificates of completion expire 30 days before the primary election in even-numbered years.

~~(7)~~(6) Notice of place and time of instruction must be given by the election administrator to the *presiding officers of the political parties in the county chairmen of the political parties.*”

**Section 13.** Section 13-10-204, MCA, is amended to read:

**“13-10-204. Write-in nominations.** An individual nominated by having ~~his~~ *the individual's* name written in *or otherwise placed* on the primary ballot and desiring to accept the nomination may not have ~~his~~ *the individual's* name ~~printed~~ *appear* on the general election ballot unless ~~he~~ *the individual*:

(1) files with the secretary of state or election administrator, no later than 10 days after the official canvass, a written declaration indicating ~~his~~ acceptance of the nomination;

(2) pays the required filing fee or, if indigent, complies with 13-10-203;

(3) received at least 5% of the total votes cast for the successful candidate for the same office at the last general election; and

(4) complies with the provisions of 13-37-126.”

**Section 14.** Section 13-10-208, MCA, is amended to read:

**“13-10-208. Certificate of primary ballot — printing preparing ballot.** (1) Not more than 75 days and not less than 67 days before the date of the primary election, the secretary of state shall certify to the election

administrators the names and designations of candidates, except as provided in 13-37-126, and any ballot issues as shown in the official records of the secretary of state's office in the manner provided in 13-10-209 and chapter 12, part 2, of this title.

(2) Not more than 67 days and not less than 62 days before the date of the primary election, the election administrator shall certify the names and designations of candidates, except as provided in 13-37-126, and any ballot issues as shown in the official record of the election administrator's office and *must* have the official ballots ~~printed~~ *prepared* in the manner provided in 13-10-209 and chapter 12, part 2, of this title.

(3) If a candidate for the legislature is no longer eligible under Article V, section 4, of the Montana constitution to seek the office for which the candidate has filed because the candidate has changed residence, the secretary of state shall notify the candidate that the candidate is required to withdraw as provided in 13-10-325."

**Section 15.** Section 13-10-209, MCA, is amended to read:

**"13-10-209. Arrangement and ~~printing~~ preparing of primary ballots.**

(1) (a) Ballots for a primary election must be arranged and ~~printed~~ *prepared* in the same manner and number as provided in chapter 12 for general election ballots, except there must be separate ballots for each political party entitled to participate. The name of the political party must ~~be printed~~ *appear* at the top of the separate ballot for that party and need not ~~be printed~~ *appear* opposite each candidate's name.

(b) Nonpartisan offices and ballot issues may be ~~printed~~ *prepared* on separate ballots or may appear on the same ballot as partisan offices if:

(i) each section is clearly identified as separate; ~~and~~

(ii) the nonpartisan offices and ballot issues appear on each party's ballot; ~~and~~

(iii) *with respect to ballot issues, written approval is obtained as provided in 13-27-502.*

(2) An election administrator does not need to ~~print~~ *prepare* a primary ballot for a political party if:

(a) the party does not have candidates for more than half of the offices to ~~be printed~~ *appear* on the ballot; and

(b) no more than one candidate files for nomination by that party for any of the offices to ~~be printed~~ *appear* on the ballot.

(3) If, pursuant to subsection (2), a primary ballot for a political party is not ~~printed~~ *prepared*, the secretary of state shall certify that a primary election is unnecessary for that party and shall instruct the election administrator to certify the names of the candidates for that party for the general election ballot only.

(4) The separate ballots for each party must ~~be have~~ the same ~~size and color appearance. The stubs of each~~ *appearance. Each* set of party ballots must bear the same number. If ~~printed~~ *prepared* as a separate ballot, the nonpartisan ballot must ~~be have~~ a different ~~size or color appearance~~ than the party ballots; but ~~the stubs~~ must be numbered in the same order as the party ballots.

(5) If a ballot issue is to be voted on at a primary election, it may be placed on the nonpartisan ballot or a separate ballot. A separate ballot may ~~be have~~ a

different size and color appearance than the other ballots in the election, but the stubs must be numbered in the same order.

(6) Each elector shall ~~must~~ receive a set of party ballots that includes the party, and a nonpartisan, and a ballot issue ballot if those ballots are printed choices.”

**Section 16.** 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 (5),~~ A person seeking to become a write-in candidate for an office in any election shall file a declaration of intent. 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. Except as provided in subsections (2) and (3), the declaration must be filed no later than 5 p.m. on the 15th day before the election and must contain:

(a) (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:

(a) dies;

(b) withdraws from the election; or

(c) is charged with a felony offense.

(3) A person seeking to become a write-in candidate for a trustee position on a school board shall file a declaration of intent no later than 5 p.m. on the 26th day before the election.

(4) 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 and school district clerk shall notify the election judges in the county or district of the names of write-in candidates who have filed a declaration of intent.

~~(5) The requirements in subsection (1) do not apply to a write-in candidate seeking election to an office for which a candidate has not filed a declaration or petition for nomination or a declaration of intent.~~



~~(6)~~(5) A declaration of intent may be sent by facsimile transmission, if a facsimile facility is available for use by the election administrator or by the secretary of state, delivered in person, or mailed to the election administrator or to the secretary of state.”

**Section 17.** Section 13-10-301, MCA, is amended to read:

**“13-10-301. Casting of ballot.** (1) Unless otherwise provided by law, the conduct of the primary election, the voting procedure, the counting, tallying, and return of ballots and all election records and supplies, the canvass of votes, the certification and notification of nominees, recounts, procedures upon tie votes, and any other necessary election procedures ~~shall~~ *must* be at the same times and in the same manner as provided for in the laws for the general election.

(2) At a primary election, the elector shall ~~mark~~ *cast votes on* only one of the ~~set of~~ party ballots, *preparing the ballot as provided in 13-13-117.* After ~~marking~~ *casting votes on* any other ballots received other than the party ballots, the elector shall ~~fold the marked and unmarked ballots separately in a manner so that the marks cannot be seen, the official stamp is visible on each ballot, and all stubs can be detached by an election judge~~ *ensure the proper disposition of the ballots in accordance with instructions provided pursuant to 13-13-112.*

~~(3) The elector shall hand the marked and unmarked ballots separately to the election judge, identifying them as marked and unmarked. If the judge determines the ballots may be voted, he shall, in the presence of the elector:~~

- ~~(a) remove the stubs from all the ballots;~~
- ~~(b) deposit the unmarked ballot or ballots and all the stubs in the stub and unmarked ballot box;~~
- ~~(c) and deposit the marked ballots in the voted ballot box.~~

~~(3) The election judge shall handle the elector's ballot as prescribed in 13-13-117.”~~

**Section 18.** Section 13-10-302, MCA, is amended to read:

**“13-10-302. Write-in votes for previously nominated candidates.** ~~If (1) Subject to subsection (2), if an elector writes the name of an individual upon casts a write-in vote for a candidate on a primary party ballot when the individual's candidate's name also appears as a candidate for the same office on another party party's ballot, the write-in vote shall count for the individual only as a candidate of the party upon whose ballot the individual's name is written counts only with respect to the party on whose ballot the write-in vote was cast and the write-in votes and the votes cast for the candidate on the separate party other party's ballots may not be added together. Except as provided in 13-10-211(5), a~~

~~(2) A write-in vote may be counted only if the vote identifies the individual by any of the designations filed pursuant to 13-10-211(1)(a)(i) through (1)(a)(iv).”~~

**Section 19.** Section 13-10-303, MCA, is amended to read:

**“13-10-303. Nominations by more than one party.** If an individual is nominated by more than one party, ~~he~~ *the individual* shall, not later than 10 days after the election, file written notification with the secretary of state or election administrator indicating the party under which ~~his~~ *the individual's* name is to appear upon the ballot for the general election. If ~~he~~ *the individual* fails to notify the proper officers, ~~his~~ *the individual's* name ~~shall~~ *must* appear

under the party with whom ~~his~~ the declaration for nomination was filed if a declaration was filed. If an individual did not file a declaration or acceptance of nomination and fails to notify the proper officers, ~~his~~ the individual's name ~~shall be printed~~ must appear on the ballot without a party designation."

**Section 20.** Section 13-10-311, MCA, is amended to read:

**"13-10-311. Election judges' duties upon closing of polls when preparing for count.** (1) ~~The~~ Except as otherwise provided in this section, election judges at the primary election shall prepare for a count of votes cast on paper ballots in the manner prescribed in 13-15-201.

(2) In preparing for a count of paper ballots, the election judges shall:

(a) separate the ballots for each political party and count each party's ballots separately;

~~(2)(b) They shall~~ reconcile the total number of party ballots and the separate total number of other ballots used at the election with the number of electors voting. Any discrepancies in the reconciliations ~~shall~~ must be handled as provided in 13-15-201~~(3)~~.

~~(3) Each party's candidates shall be listed~~

(c) list each party's candidates separately in the tally books; and

~~(4) The voted ballots of each party shall be bundled~~

(d) bundle the voted ballots for each party separately for return to the election administrator. The unvoted ballots deposited in the stub box shall must be bundled with the stubs in accordance with rules established pursuant to 13-12-202.

(3) At a primary election, the election judges shall prepare for the counting of nonpaper ballots in the manner prescribed under rules adopted pursuant to [section 3]."

**Section 21.** Section 13-12-201, MCA, is amended to read:

**"13-12-201. Secretary of state to certify ballot.** (1) Seventy-five days or more before an election, except as provided in 13-10-208, the secretary of state shall certify to the election administrators the name and party or other designation of each candidate entitled to appear on the ballot and the ballot issues as shown in the official records of the secretary of state's office, which must include the notification specified in 13-37-126.

(2) The election administrator shall certify the name and party or other designation of each candidate entitled to appear on the ballot and the ballot issues as shown in the official records of the election administrator's office, which must include the notification specified in 13-37-126, and shall have the official ballots ~~printed~~ prepared.

(3) If a candidate for the legislature is no longer eligible under Article V, section 4, of the Montana constitution to seek the office for which the candidate has filed because the candidate has changed residence, the secretary of state shall notify the candidate that the candidate is required to withdraw as provided in 13-10-325."

**Section 22.** Section 13-12-202, MCA, is amended to read:

**"13-12-202. Ballot form and uniformity.** (1) The secretary of state shall adopt statewide uniform rules that prescribe the ballot form for ~~all types of ballots~~ each type of ballot used in this state. The rules must conform to the

provisions of this title unless the voting system used clearly requires otherwise. At a minimum, the rules must address:

- (a) the manner in which each type of ballot may be corrected under 13-12-204;
  - (b) what provisions must be made on the ballot for write-in candidates;
  - (c) the size and content of stubs on paper ballots, except as provided in 13-19-106(1);
  - (d) how unvoted ballots must be handled;
  - (e) how the number of individuals voting and the number of ballots cast must be recorded; and
  - (f) the order and arrangement of voting system ballots.
- (2) The names of all candidates ~~printed upon to appear on the ballots shall~~ must be in ~~type of~~ the same font size and ~~character style~~.
- (3) ~~When~~ Notwithstanding 13-19-106(1), when the stubs are detached, it must be impossible to distinguish any one of the ballots from another ballot for the same office or issue.
- (4) The ballots must contain the name of ~~every~~ each candidate whose nomination is certified under law for an office and no other names, except that the names of candidates for president and vice president of the United States ~~shall must~~ appear on the ballot as provided in 13-25-101(2)."

**Section 23.** Section 13-12-203, MCA, is amended to read:

**"13-12-203. Printing Appearance of candidate's name and party designation on ballot.** (1) ~~Except Subject to 13-12-202 and except as provided in 13-10-209 for nonpartisan offices and 13-10-303 for certain other candidates,~~ in partisan elections, candidates' names ~~shall be printed~~ must appear under the title of the office sought, with the name of the party; in not more than three words, or "Independent" ~~printed~~ appearing opposite the name.

(2) ~~In~~ Subject to 13-12-202, in nonpartisan elections, the candidates' names ~~shall be printed~~ must appear under the title of the office sought, with no description or designation ~~printed~~ appearing with the name unless partisan and nonpartisan offices appear on the same ballot. In such a case, the names of nonpartisan candidates ~~shall have printed~~ must appear with ~~them~~ the words "Nominated without party designation"."

**Section 24.** Section 13-12-204, MCA, is amended to read:

**"13-12-204. Method of correction of ballot.** If an appointment has been made to replace a candidate, as provided in 13-10-326, 13-10-327, or 13-10-328, or if a candidate for lieutenant governor has been advanced to the candidacy for governor, as provided in 13-10-328, after the ballots have been ~~printed~~ prepared but before the election, the election administrator may:

(1) ~~order labels printed containing the name of the new candidate and any other information required to go on the ballot. If labels are printed, the election administrator shall affix the labels in the proper place on each ballot or deliver the labels to the chief election judges to be affixed in the proper place on each ballot before it is given to the elector. correct the ballot in a manner consistent with rules adopted under 13-12-202;~~

(2) have the entire ballot ~~reprinted~~ redone; or

(3) have a separate ballot prepared only for the office for which the new candidate is a candidate.”

**Section 25.** Section 13-12-205, MCA, is amended to read:

**“13-12-205. Arrangement of names — rotation on ballot.** (1) The candidates’ names ~~shall~~ *must* be arranged alphabetically on the ballot according to surnames under the title of the respective offices *and rotated as provided in this section.*

(2) (a) Except as provided in subsection (3), if two or more individuals are candidates for nomination or election to the same office, the election administrator shall divide the ballot forms into sets equal in number to the greatest number of candidates for any office. The candidates for nomination to an office by each political party ~~shall~~ *must* be considered separately in determining the number of sets necessary for a primary election.

(b) The election administrator shall begin with a form arranged alphabetically and rotate so that each candidate’s name will be at the top of the list for each office on substantially an equal number of ballots. If it is not numerically possible to place each candidate’s name at the top of the list, the names ~~shall~~ *must* be rotated in groups so that each candidate’s name is as near the top of the list as possible on substantially an equal number of ballots.

(c) If the county contains more than one legislative district, the election administrator may rotate each candidate’s name so that it will be at or near the top of the list for each office on substantially an equal number of ballots in each house district.

(d) For purposes of rotation, the offices of president and vice president and of governor and lieutenant governor ~~shall~~ *must* be considered as a group.

(e) No more than one of the sets may be used in ~~printing~~ *preparing* the ballot for use in any one precinct, and all ballots furnished for use in any precinct must be identical.

(3) In a precinct where ~~voting devices are a nonpaper-based voting system is~~ used, the election administrator need not rotate candidates’ names as provided in subsection (2) on ~~the~~ paper ballots required under 13-17-305; ~~however, if unless~~ more than 5% of the electors voting in the precinct in the last preceding general election voted using paper ballots, ~~the election administrator shall rotate candidates’ names on the paper ballots.~~ If the candidates’ names are not rotated, the election administrator shall determine by lot the arrangement of the names on the paper ballot *required under 13-17-305.*”

**Section 26.** Section 13-12-212, MCA, is amended to read:

**“13-12-212. Election administrator to provide printed official ballots — other ballots prohibited.** Except as otherwise provided in the election laws of this state:

~~(1) the~~ Each election administrator shall provide ~~printed the official~~ ballots for every election ~~conducted by the election administrator. He shall have printed on the ballot the names of all candidates for all offices to be filled at the election and the title and other wording required by law for all ballot issues.~~

~~(2) ballots~~ A ballot other than those ~~printed by the election administrator~~ an official ballot may not be cast or counted in any election.”

**Section 27.** Section 13-13-111, MCA, is amended to read:

**“13-13-111. Provision and use of election booths, voting machines, or voting devices stations.** (1) The election administrator shall provide a sufficient number of ~~booths, voting machines, or voting devices~~ *stations* to allow voting to proceed with as little delay as possible.

(2) ~~Booths, voting machines, or voting devices~~ *Voting stations* must be arranged in a manner that will not permit any other individual to see how the elector votes or has voted, ~~and the election judges may not permit any individual to remain in any position that would allow him to see how the elector votes or has voted.~~

~~(2)~~(3) No more than one individual may occupy a ~~booth~~ *voting station* at one time, except when assistance is furnished ~~to an elector as provided by law.~~

(4) An individual may *not* occupy a ~~booth or use a voting machine or device~~ *station* longer than is reasonably necessary to prepare ~~his~~ *the elector's* ballot, after which the election judges may eject ~~him~~ *the elector from the station.*”

**Section 28.** Section 13-13-112, MCA, is amended to read:

**“13-13-112. Display of instructions for electors.** (1) ~~Instructions~~ *Except as provided in subsection (3), instructions* for electors on how to prepare their ballots or use ~~machines or devices~~ *a voting system* must be posted in each ~~compartment~~ *voting station* provided for the preparation of ballots and elsewhere in the polling place.

(2) The instructions must be in easily read type, 18 point or larger, and explain how to:

(a) obtain ballots for voting;

(b) prepare ballots ~~for deposit in the ballot box,~~ *including how to:*

(i) *cast a valid vote, including a valid vote for a write-in candidate;*

(ii) *correct a mistake; and*

(iii) *ensure the proper disposition of the ballot after the elector is finished voting;* and

(c) obtain a new ballot in place of one spoiled by accident.

(3) If the instructions for use of ~~the machine or device~~ *a voting system* are printed on the ~~machine or device~~ *system* or are part of a ballot package given to each elector, separate instructions need not be posted in the ~~compartment~~ *voting station.*

(4) Official ballots ~~for the precinct,~~ clearly marked “sample” across the face, ~~shall~~ *must* be posted ~~in~~ *at* each ~~booth or compartment~~ *voting station* and in conspicuous places ~~about~~ *around* the polling place ~~in all precincts where paper ballots are used.~~ *Diagrams showing the arrangement of the ballot for that precinct shall be posted in conspicuous places about the polling place in all precincts using machines or devices.*”

**Section 29.** Section 13-13-115, MCA, is amended to read:

**“13-13-115. Pollbooks Recording number of voters and ballots.** (1) ~~In precincts using paper ballots, the name of each elector who votes shall be entered in a pollbook and numbered in the order voting so that the number corresponds with the number on the stubs of the ballots given the elector or an election judge may use a numbering device to stamp the number of the ballot stub next to the name of the elector in a precinct register/pollbook.~~

~~(2) In precincts where machines or devices are used, a pollbook need be used only for paper ballots. The election administrator shall provide such precincts with some method of recording the number of individuals voting. The election administrator in each precinct shall use a precinct register, pollbook, or some other method to record the number of individuals voting and the number of ballots cast that conforms to the method prescribed by the secretary of state in accordance with rules adopted pursuant to 13-12-202."~~

**Section 30.** Section 13-13-116, MCA, is amended to read:

**"13-13-116. Ballots Paper ballots to be stamped marked— one ballot to elector.** (1) Before delivering ~~ballots~~ a paper ballot to an elector, the election judges shall ~~stamp~~ ensure that the ballot is marked with the words "official ballot" ~~on the ballot. A~~ without part of the ~~stamp mark may not appear appearing on the stub, if any. They~~ The election judges shall also ~~stamp~~ ensure that the ballot is marked with the name of the county, the number of the precinct, and any other information the election administrator believes necessary to distinguish the ballots from those used in any other election.

(2) Each elector ~~shall~~ must receive from the election judges one of each type of ballot being used at the election."

**Section 31.** Section 13-13-117, MCA, is amended to read:

**"13-13-117. Method of voting.** (1) (a) Upon receipt of a paper ballot or, if a nonpaper ballot is used, after marking the precinct register pursuant to 13-13-115, an elector shall immediately retire to ~~one of the booths~~ a voting station and prepare the elector's ballot:

~~(2) The elector shall prepare the ballot~~ in the manner prescribed in the instructions ~~for electors~~ provided pursuant to 13-13-112.

~~(3) The elector may vote for a write in candidate by marking the ballot in a manner consistent with the instructions provided by the election administrator pursuant to 13-13-112. Except as provided in 13-15-202, a ballot marked for a write in candidate in accordance with the appropriate instructions must be counted as if the name of the write in candidate had been printed on the ballot.~~

~~(b) An elector who spoils the elector's ballot must be provided with another ballot in place of the spoiled ballot.~~

~~(4) The (2) (a) After the elector has completed voting, judge receiving the ballots shall remove the stubs in sight of the elector and deposit each ballot in the ballot box and each stub in a box for detached stubs. The the elector shall ensure the proper disposition of the elector's ballot in accordance with instructions provided pursuant to 13-13-112.~~

~~(b) If a paper ballot was cast, an election judge shall place the ballots ballot in the ballot box immediately without opening or examining them the ballot.~~

~~(5) No individual except~~ Only an election judge may put a ballot, ~~any paper resembling a ballot, or anything other than a ballot~~ in a ballot box, and nothing other than a ballot may be put in a ballot box.

~~(6) An elector who spoils the elector's ballot must, on returning the spoiled ballot, receive another in place of it."~~

**Section 32.** Section 13-13-201, MCA, is amended to read:

**"13-13-201. Voting by absentee ballot — procedures.** (1) A qualified registered elector is entitled to vote by absentee ballot as provided for in this part.

- (2) The elector may vote ~~the~~ absentee *only by paper* ballot and by:
- (a) marking the ballot in the manner specified;
  - (b) placing the marked ballot in the secrecy envelope, free of any identifying marks;
  - (c) placing the secrecy envelope containing one ballot for each election being held in the return ~~and verification~~ envelope;
  - (d) executing the affidavit printed on the return ~~and verification~~ envelope; and
  - (e) returning the return~~and verification~~ envelope with ~~the secrecy envelope containing the ballot or ballots enclosed, as provided in 13-13-221~~ all appropriate enclosures by regular mail, postage prepaid, or by delivering it to the election administrator of the special absentee election board.”

**Section 33.** Section 13-13-203, MCA, is amended to read:

**“13-13-203. Absentee ballots where ~~voting machines or devices~~ nonpaper-based voting systems are used.** (1) In precincts where nonpaper-based voting ~~machines or devices~~ systems are used, the election administrator shall ~~if necessary print and~~ provide:

(a) *paper* ballots in the official form *specified according to rules adopted pursuant to 13-12-202* for qualified electors who may vote absentee as provided in 13-13-201; and

(b) ballot boxes required for ~~precincts in which printed ballots are used~~ each precinct.

(2) Absentee ballots received in those precincts ~~shall~~ *must* be handled as provided ~~in this chapter~~ by law.”

**Section 34.** Section 13-13-205, MCA, is amended to read:

**“13-13-205. When *paper* ballots to be available.** (1) The election administrator shall ensure that *paper* ballots are printed and available for absentee voting at least 45 days prior to an election for those elections held in compliance with 13-1-104(1) and 13-1-107(1).

(2) For elections held in compliance with 13-1-104(2) and (3) and 13-1-107(2), the election administrator shall ensure that *paper* ballots are printed and available for absentee voting at least 20 days prior to an election.”

**Section 35.** Section 13-13-211, MCA, is amended to read:

**“13-13-211. Time period for application.** ~~An~~ (1) *Except as provided in 13-13-222 and subsection (2) of this section, an* application for an absentee ballot must be made during a period beginning 75 days before the day of election and ending at noon on the day before the election.

(2) ~~However, a~~ A qualified elector who is prevented from voting at the polls as a result of illness or health emergency occurring between 5 p.m. of the Friday preceding the election and noon on election day may request to vote by absentee ballot *as provided in 13-13-212(3).*”

**Section 36.** Section 13-13-212, MCA, is amended to read:

**“13-13-212. Application for absentee ballot — special provisions.** (1) An elector may apply for an absentee ballot by making a written request, signed by the applicant, to the election administrator of the applicant’s county of residence within the time period specified in 13-13-211.

(2) An elector in the United States service absent from the state and county in which the elector is registered may apply for an absentee ballot as follows:

(a) as provided in subsection (1);

(b) by using the federal postcard application signed by the applicant and made within the time period specified in 13-13-211; or

(c) if eligible, by using the federal write-in ballot as provided in 13-13-271(3).

(3) (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 special absentee election board provided for 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 special absentee election board at the elector's place of confinement, hospitalization, or residence within the county.

(c) A request under this subsection (3) must be received by the election administrator ~~by noon on election day~~ *within the time period specified in 13-13-211(2).*

(4) An elector who has made a request for an absentee ballot by one of the methods provided in this section may, in the event of the death of a candidate after the primary election but before the general election, make a request for a replacement ballot. The request for a replacement ballot may be made orally to the election administrator."

**Section 37.** Section 13-13-214, MCA, is amended to read:

**"13-13-214. Mailing absentee ballot to elector — delivery to person other than elector.** (1) (a) Except as provided in 13-13-213 and in subsection (1)(b) of this section, as soon as the official *paper absentee* ballots are printed, the election administrator shall *immediately* send by mail, postage prepaid, to each elector from whom the election administrator has received a valid application *under 13-13-211 and 13-13-212* whatever official ballots are necessary. ~~Ballots must be sent immediately to electors submitting valid requests after the official ballots are printed.~~

(b) The election administrator may deliver a ballot in person to an individual other than the elector if:

(i) the elector has designated the individual, either by a signed letter or by making the designation on the application form in a manner prescribed by the secretary of state;

(ii) the individual taking delivery of the ballot on behalf of the elector verifies, by signature, receipt of the ballot;

(iii) the election administrator believes that the individual receiving the ballot is the designated person; and

(iv) the designated person has not previously picked up ballots for four other electors.

(2) The election administrator shall enclose with the ballots:

(a) a secrecy envelope, free of any marks that would identify the voter; and

(b) ~~a self-addressed~~ *an* envelope for the return of the ballots. ~~An~~ *The envelope must be self-addressed by the election administrator and an affirmation in the*



form prescribed by the secretary of state must be printed on the back of the envelope.

(3) The election administrator shall ~~stamp~~ ensure that the ballots provided to an absentee elector are marked as provided in 13-13-116 and remove the stubs from the ballots, attaching the stubs to the elector's absentee ballot application.

(4) ~~Both~~ If the ballot is being sent to an elector in the United States service, both the envelope in which the ballot is mailed to an elector in the United States service and the return envelope must have printed across the face the information and graphics and be of the color prescribed by the secretary of state consistent with the regulations established by the federal election commission, the U.S. postal service, or other federal agency.

(5) If the ballots sent to the elector are for a primary election, the election administrator shall enclose an extra envelope marked "For Unvoted Party Ballot(s)". This envelope may not be numbered or marked in any way so that it can be identified as being used by any one elector.

(6) Instructions for voting must be enclosed with the ballots. Instructions for primary elections must include use of the envelope for unvoted ballots. The instructions must include information concerning the type or types of writing instruments that may be used to mark the absentee ballot. The instructions must include information regarding use of the secrecy envelope and use of the return and verification envelope. The election administrator shall include a voter information pamphlet with the instructions if:

- (a) a statewide ballot issue appears on the ballot mailed to the elector;
  - (b) the elector is out of the state or will be out of the state at the time of the election; and
  - (c) the elector requests a voter information pamphlet.
- ~~(7) The return envelope must be self addressed to the election administrator."~~

**Section 38.** Section 13-13-222, MCA, is amended to read:

**"13-13-222. Marking ballot before election day.** (1) As soon as the official ballots are available pursuant to 13-13-205, the election administrator shall permit an elector to apply for, receive, and mark ~~the~~ an absentee ballot before election day ~~before~~ 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) If the ballot is marked before the election administrator, the election administrator shall deal with it in the same manner as if it had come by mail as provided in 13-13-231."

**Section 39.** Section 13-13-229, MCA, is amended to read:

**"13-13-229. Voting performed before special absentee election board.** (1) Pursuant to 13-13-212(3), the elector may request that a special absentee election board personally deliver a ballot to the elector.

(2) The manner and procedure of voting by use of an absentee ballot under this section must be the same as provided in ~~13-13-221~~ 13-13-201, except that the elector shall hand the marked ballot in the sealed return envelope to the special absentee election board, and the board shall deliver the sealed return

envelope to the election administrator or to the election judges of the precinct in which the elector is registered.

(3) An absentee ballot cast by a qualified elector pursuant to this section may not be rejected by the election administrator if the ballot was in the possession of the board before the time designated for the closing of the polls.

(4) An elector who needs assistance in marking the elector's ballot because of physical incapacity or inability to read or write may receive assistance from the special absentee election board appointed to personally deliver the ballot. Any assistance given an elector pursuant to this section must be provided in substantially the same manner as required in 13-13-119."

**Section 40.** Section 13-13-231, MCA, is amended to read:

**"13-13-231. Disposition of marked ballot upon receipt by election administrator.** (1) Upon receipt of the voted absentee ballot, the election administrator shall immediately attach the elector's application to the unopened return envelope and mark the precinct number for delivery.

(2) The election administrator shall safely keep the absentee ballots in the election administrator's office until delivered by the election administrator to the election judges.

(3) *If the election administrator receives an absentee ballot for which an application or request was not made or received as required by 13-13-211 through 13-13-214, the election administrator shall endorse upon the elector's envelope the date and exact time of receipt and the words "to be rejected". Absentee ballots endorsed in this manner must be handled as provided in 13-13-243.*"

**Section 41.** Section 13-13-232, MCA, is amended to read:

**"13-13-232. Delivery of voted absentee ballots, secrecy envelopes, and return envelopes to election judges — ballots to be rejected.** (1) ~~If the All voted absentee ballot is received prior to delivery of ballots received and processed pursuant to 13-13-231 prior to the delivery of the official ballots to the election judges, the election administrator shall deliver the unopened return envelope to the judges at the same time that the ballots are delivered. The return envelopes must be opened and the ballots processed according to the procedures described in 13-13-241 must be delivered in their unopened return envelopes to the election judges at the same time that the official ballots are delivered.~~

(2) ~~If A voted absentee ballots are ballot received and processed pursuant to 13-13-231 after the ballots are have been delivered to the election judges but prior to the close of the polls, the election administrator shall immediately deliver the unopened return envelopes must be immediately delivered in the ballot's unopened return envelope to the judges. The return envelopes must be opened and the ballots processed according to the procedures described in 13-13-241.~~

(3) ~~If the election administrator receives an absentee ballot for which an application or request was not made or received as required by this part, the election administrator shall endorse upon the elector's envelope the date and exact time of receipt and the words "to be rejected". Absentee ballots endorsed in this manner must be retained by the election administrator and placed with the proper records when they are returned to the election administrator.~~

(3) *Election judges shall process the absentee ballots as provided in 13-13-241.*"

**Section 42.** Section 13-13-233, MCA, is amended to read:

**"13-13-233. Issue and record of absentee ballots — certificate to election judges.** (1) ~~The absentee~~ Absentee ballots delivered shall ~~must be~~ regular official numbered paper ballots beginning with ballot number 1 and following consecutively according to the number of applications for absentee ballots.

(2) The election administrator shall keep a record of all absentee ballots delivered, as well as of ballots marked before him issued.

(3) ~~The~~ When the election administrator shall deliver to the chief election judges to whom the ballots are delivered delivers the voted absentee ballots pursuant to 13-13-232(1), the election administrator shall also provide a certificate stating:

(a) the ~~number~~ ballot numbers of the absentee ballots mailed pursuant to 13-13-214, delivered pursuant to 13-13-229, as well as those, and marked before him in person pursuant to 13-13-222;

(b) the number of ballots retained to be reserved for late absentee voting pursuant to 13-13-211(2); and

(c) the names of the electors within the precinct to whom such the ballots were delivered or by whom they have been marked if marked before him provided.

(4) The chief election judge shall post in a conspicuous location at the polling place a list of the names of electors appearing on the certificate required under subsection (3)."

**Section 43.** Section 13-13-234, MCA, is amended to read:

**"13-13-234. Duty of election judges — pollbook.** (1) The election judges, at the opening of the polls, shall:

(a) note on the pollbook opposite the appropriate ballot numbers corresponding to the number of absentee ballots issued the fact that the ballots were issued as absentee ballots; and

(b) reserve the numbers for the absent, chronically ill, or physically incapacitated electors, as well as those electors prevented from voting at the polls because of a sudden illness or health emergency electors who may vote late under 13-13-211(2).

(2) The election judges shall insert only the name of the elector entitled to each particular number according to the certificate ~~of~~ provided by the election administrator pursuant to 13-13-233(3) and the number of his the elector's ballot."

**Section 44.** Section 13-13-241, MCA, is amended to read:

**"13-13-241. Examination of absentee ballot return envelopes and affirmations while polls open — deposit of absentee and unvoted paper ballots.** (1) (a) While the polls are open or after the polls have closed, the an election judges may judge shall compare the signature of the elector on the absentee ballot request application and the signature on the return envelope's affirmation.

~~(b) If they find the election judge finds that the signatures correspond, that the affirmation is sufficient, and that the absentee elector is qualified, they may open the absentee ballot return envelope the judge shall process the ballot as provided in subsection (2).~~

~~(2)(c) If the election judge finds that an absentee ballot does not meet the requirements specified in subsection (1)(b), it the ballot must be rejected. The election judges judge, without opening the absentee ballot return envelope, shall mark across it the reason for rejection and a majority of the judges shall sign their initials on the return envelope. Unopened rejected absentee ballot return envelopes must be handled in the same manner as provided for rejected ballots in 13-13-243.~~

~~(3)(2) After opening the If an absentee ballot return envelope is found to be sufficient under subsection (1)(b), an election judge shall open the return envelope and, without opening the secrecy envelope, they shall place the secrecy envelope in the proper ballot box. In a primary election, the unvoted ballots must be deposited in the unvoted ballot box without being removed from their enclosure envelopes.~~

~~(4) After opening the absentee ballot return envelope and if the If the absentee ballot has not been placed in the secrecy envelope, without unfolding the ballot or otherwise permitting it to be examined, the election judges judge shall place the ballot in the a secrecy envelope and place the secrecy envelope in the proper ballot box.~~

~~(3) In a primary election in which paper ballots are used, an unvoted party ballot must be deposited in a ballot box for unvoted paper ballots without being removed from its enclosure envelope. If a party ballot has not been properly placed into an enclosure envelope, an election judge shall enclose the ballot in a proper envelope and deposit the ballot in the ballot box for unvoted party ballots."~~

**Section 45.** Section 13-13-244, MCA, is amended to read:

**"13-13-244. Opening of return envelopes after deposit.** If an a return envelope containing an absentee ballot has been deposited unopened in the ballot box and the envelope has not been marked rejected, the return envelope shall must be opened without a court order and the ballot cast and processed as provided in 13-15-201."

**Section 46.** Section 13-14-115, MCA, is amended to read:

**"13-14-115. Preparation and distribution of nonpartisan primary ballots — determination on conducting a primary.** (1) The election administrators shall arrange, prepare, and distribute primary ballots for nonpartisan offices, designated "nonpartisan primary ballots". The ballots must be arranged as other primary ballots and prepared as provided in 13-10-209 and be without political designation.

~~(2) The number of nonpartisan primary ballots and sample ballots furnished must be the same as other primary ballots.~~

~~(3)(2) (a) The election administrator of a political subdivision may determine that 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 office on the ballot.~~

(b) If the election administrator determines that a primary election need not be held pursuant to subsection ~~(3)(a)~~ (2)(a), the administrator shall give notice to the governing body that ~~no~~ a primary election will *not* be held.

~~(4)~~(3) The governing body may require that a primary election be held 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.”

**Section 47.** Section 13-14-116, MCA, is amended to read:

**“13-14-116. Counting and canvassing of nonpartisan ballots.** ~~(1) After closing the polls, the election officers shall separately count, canvass, record, and certify nonpartisan ballots, showing the number of votes cast for each person, except as provided in 13-15-202.~~

~~(2) Nonpartisan ballots, stubs, and unused ballots must be disposed of in the same manner as other ballots, stubs, and unused ballots. Returns must be made as provided by law. Nonpartisan ballots must be counted and canvassed as provided for in chapter 15.”~~

**Section 48.** 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), candidates for nomination equal to twice the number to be elected at the general election who receive the highest number of votes cast at the primary are the nominees for the office. 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~~(3)~~(2), a primary election is not held, then all candidates who filed for an office are nominees for the office.”

**Section 49.** Section 13-14-118, MCA, is amended to read:

**“13-14-118. Vacancies among nominees after nomination and before general election.** (1) If after the primary *election* a candidate is not able to run for the office for any reason, the vacancy ~~shall~~ *must* be filled by the candidate next in rank in number of votes received in the primary election.

(2) If a vacancy for a nonpartisan nomination cannot be filled as provided in subsection (1) and the vacancy occurs no later than 75 days before the general election, a 10-day period for accepting declarations for nomination or statements of candidacy and nominating petitions for the office ~~shall~~ *must* be declared by:

(a) the governor for national, state, judicial district, legislative, or any multicounty district office;

(b) the governing body of the appropriate political subdivision for all other offices.

(3) The names of the candidates who filed as provided in subsection (2) ~~shall~~ *must* be certified and ~~printed~~ *must appear* on the general election ballot in the same manner as candidates nominated in the primary.

(4) If the vacancy occurs later than 75 days before the general election and ~~no~~ a qualified individual is *not* elected to the office at the general election, the office ~~shall be~~ *is* vacant and ~~shall~~ *must* be filled as provided by law.”

**Section 50.** Section 13-14-212, MCA, is amended to read:

**“13-14-212. Form of ballot on retention of certain incumbent judicial officers.** ~~In the event~~ *If* there is no candidate other than the

incumbent for the office of chief justice, supreme court justice, district court judge, or justice of the peace, the name of the incumbents ~~shall~~ *must* be placed on the official ballot for the general election as follows:

Shall (insert title of officer) (insert name of the incumbent officer) of the (insert title of the court) of the state of Montana be retained in office for another term?

YES

NO

~~(Mark an "x" before the word "YES" if you wish the official to remain in office. Mark an "x" before the word "NO" if you do not wish the official to remain in office.)~~ *Following the question, provision must be made, subject to rules adopted pursuant to 13-12-202, for a voter to indicate a "yes" or "no" vote.*

**Section 51.** Section 13-15-101, MCA, is amended to read:

**"13-15-101. Votes to be publicly counted upon closing of polls — return forms.** (1) ~~When the polls are closed, the election judges shall immediately count the votes. The~~ *Any official vote count shall* ~~must~~ be public and continue without adjournment until completed and the result is publicly declared.

(2) Immediately after all the ballots are counted by precinct, the election judges shall copy the total votes cast for each candidate and for and against each proposition on the return forms furnished by the election administrator.

(3) The election judges shall immediately post one of the return forms at the place of counting and return a copy to the election administrator. Both forms ~~shall~~ *must* be signed by all the election judges completing the count."

**Section 52.** Section 13-15-103, MCA, is amended to read:

**"13-15-103. Counting board procedures.** (1) ~~In any precinct where a counting board has been appointed in addition to the regular board of election judges, After ballots have been prepared pursuant to 13-15-201, the election administrator may arrange for the vote count to begin prior to the close of the polls, or immediately upon the closure of the polls, in the manner prescribed in this section.~~

(2) (a) *When a count is conducted after the polls have closed, the counting board shall meet at a place designated by the election administrator.*

~~(2) The election administrator may provide duplicate boxes for voted ballots and duplicate pollbooks at any precinct for which a counting board has been appointed and may arrange for the counting board to begin the count of the votes cast before the polls close. The counting board shall~~

~~(b) The board must be sequestered in a separate room from where the ballots are being cast until after the polls close. Any individual observing the counting board procedures must be sequestered with the board until after the polls close. The counting board shall proceed by counting all ballots in the first box and then that box and pollbook shall be exchanged for the second box and duplicate pollbook. The~~ *until the count is complete.*

~~(c) The board shall continue counting until the votes cast for all candidates and issues are counted. The election administrator may appoint an extra election judge to act as a marshal to be responsible for exchanging ballot boxes and pollbooks and enforcing sequestering of the board and observers~~

*(d) Votes must be counted as prescribed in [section 2].*

(3) ~~The election administrator may have the counting board for a precinct begin work as soon as the polls close instead of using the procedure outlined in subsection (2).~~

(4) ~~In a county where voting devices are used, When votes are counted prior to the close of the polls:~~

(a) ~~the election administrator may shall~~ make provisions for the delivery of voted ballots to the counting center at any time prior to the closing of the polls. ~~The;~~

(b) ~~the board must be sequestered in a room separate from the room where ballots are being cast;~~

(c) ~~anyone observing the count must be sequestered with the board until the polls close;~~

(d) ~~the~~ ballots may be processed and counted as they are received, ~~but the results of this early count may not be released to the public until after all the polls are closed.;~~

(5) ~~No~~ (e) ~~an~~ election judge or other individual having access to ~~the information~~ early count results may not disclose ~~any results of early counting that information to the public while the polls are open; and~~

(f) ~~votes must be counted as prescribed in [section 2].~~

(4) (a) ~~When votes are being counted prior to the close of the polls, in addition to the official oath taken and subscribed to by the election judges, the members of the counting board shall complete and sign the following affirmation: "I, ....., will not discuss the results of the early counting of votes while the polls are open."~~

(b) ~~The chief election judge shall witness and sign the affirmation in subsection (4)(a)."~~

**Section 53.** Section 13-15-104, MCA, is amended to read:

**"13-15-104. Counting Absentee ballot counting board for absentee ballots.** (1) The election administrator shall:

(a) give special instructions to any ~~counting board for absentee ballots~~ *ballot counting board* appointed under ~~13-4-101~~ [section 1] on the proper procedures for counting the absentee ballots; and

(b) provide the forms and supplies necessary for the board to perform its duties.

(2) The ~~counting board for absentee ballots~~ *ballot counting board* shall:

(a) be sequestered in a room separate from where ballots are being cast;

(b) at any time prior to the closing of the polls but not before the polls open, start the count of the absentee votes cast; and

(c) follow the procedures outlined in 13-13-241 and 13-15-103 for the counting of the votes cast.

(3) ~~No~~ An election judge or other individual having access to any results of early counting may *not* disclose the information while the polls are open, and he must remain sequestered until the closing of the polls.

(4) (a) ~~In addition to the official oath taken and subscribed to by the election judges, the members of the counting board for absentee ballots shall complete and sign the following affirmation: "I, ....., will not discuss or disclose or allow~~

anyone else to discuss or disclose to anyone the results of the early counting of votes while the polls are open.”

~~(b) The chief election judge shall witness and sign the affirmation. The absentee ballot counting board shall take the oath and sign the affirmation specified in 13-15-103(4)."~~

**Section 54.** Section 13-15-105, MCA, is amended to read:

**"13-15-105. Notices relating to absentee ballot counting board for absentee ballots.** (1) Whenever ~~a~~ an absentee ballot counting board for absentee ballots is appointed under ~~13-4-101~~ [section 1], the election administrator shall:

~~(1)(a)~~ (a) publish in the contracted newspaper of the county as provided in 7-5-2411 a notice indicating ~~that such a~~ the method that will be used for counting absentee ballots; and

~~(2)(b)~~ (b) post in a conspicuous location at the office of the election administrator, by 5 p.m. of the day before an election, a notice that indicates the place and time that the counting board for absentee ballots will meet on election day.

~~(2) The~~ If the count will begin while the polls are open, the notice required under subsection (1) must inform the public that any person observing the procedures of the counting board must be sequestered with the board until the polls are closed and ~~the counting board is released and must~~ is required to take the oath provided in ~~13-15-104~~ 13-15-103(4)."

**Section 55.** Section 13-15-201, MCA, is amended to read:

**"13-15-201. Preparation for count.** (1) ~~(a) To begin the~~ Subject to 13-10-311, to prepare for a manual or automatic count of paper ballots before or after the close of the polls, the counting board of election judges designated under [section 1] shall take ballots out of the box unopened to determine whether each ballot is single. ~~The election judges~~

(b) If an absentee ballot counting board has been appointed pursuant to [section 1], the absentee ballots must be delivered to the absentee ballot counting board and counted as provided in 13-15-104. If an absentee ballot counting board has not been appointed, the regular counting board shall, subject to 13-13-244, remove each absentee ballot secrecy envelope and open it to determine whether the ballot for each election is single. ~~A ballot~~ An absentee ballot must be rejected if in the envelope there is more than one voted ballot for each election.

~~(2) They~~ (c) The counting board shall count ~~the~~ all ballots to ensure that the total number of ballots corresponds with the total number of names ~~on~~ in the pollbook.

~~(3)(d)~~ (d) If ~~they~~ the counting board cannot reconcile the total number of ballots with the pollbook, ~~they~~ the board shall submit to the election administrator a written report stating how many ballots were missing or in excess and any reason of which they are aware for the discrepancy. ~~All judges~~ Each judge on the board shall sign the report.

~~(4)(e)~~ (e) A ballot that is not ~~endorsed by the~~ marked as official stamp is void and may not be counted unless ~~the~~ all judges on the counting board agree that the stamp marking is missing because of ~~their~~ an error. ~~The~~ by election officials, in which case the ballot must be marked "unstamped" "unmarked by error" on the back and must be initialed by all judges.



~~(5)(f)~~ If two or more ballots are folded or stuck together to look like a single ballot, they must be laid aside until the count is complete. The election judges counting board shall compare the count with the pollbooks, and if a majority believes that the ballots folded together were voted by one elector, ~~they~~ the ballots must be rejected; otherwise they must be counted.

(2) For nonpaper ballots, the counting board shall prepare for the official count in a manner prescribed by the secretary of state pursuant to [section 3].”

**Section 56.** Section 13-16-201, MCA, is amended to read:

**“13-16-201. Conditions under which recount to be made conducted.**

(1) A recount ~~shall be made under any of the following conditions must be conducted if:~~

~~(1)(a)~~ If a candidate for a county, municipal, or district office voted for in only one county, other than a legislator or a judge of the district court, or a precinct office is defeated by a margin not exceeding 1/4 of 1% of the total votes cast or by a margin not exceeding 10 votes, whichever is greater, ~~he may~~ and the defeated candidate, within 5 days after the official canvass, ~~file~~ files with the election administrator a verified petition stating ~~he~~ that the candidate believes that a recount will change the result and that a recount of the votes for the office or nomination should be ~~had~~ conducted;

~~(2)(b)~~ If a candidate for a congressional office, a state or district office voted on in more than one county, the legislature, or judge of the district court is defeated by a margin not exceeding 1/4 of 1% of the total votes cast for all candidates for the same position, ~~he may~~ and the defeated candidate, within 5 days after the official canvass, ~~file~~ files a petition with the secretary of state as set forth in subsection ~~(1)(a)~~. The secretary of state shall immediately notify by certified mail each election administrator whose county includes any precincts ~~which that~~ voted for the same office by certified or registered mail, and a recount ~~shall~~ must be conducted in those precincts.

~~(3)(c)~~ If a question submitted to the vote of the people of a county, municipality, or district within a county is decided by a margin not exceeding 1/4 of 1% of the total votes cast for and against the question, ~~and~~ a petition as set forth in subsection ~~(1) may be~~ (1)(a) is filed with the election administrator. This petition must be signed by not less than 10 electors of the jurisdiction and must be filed within 5 days after the official canvass.

~~(4)(d)~~ If a question submitted to the vote of the people of the state is decided by a margin not exceeding 1/4 of 1% of the total votes cast for and against the question, ~~and~~ a petition as set forth in subsection ~~(1) may be~~ (1)(a) is filed with the secretary of state. This petition must be signed by not less than 100 electors of the state, representing at least five counties of the state, and must be filed within 5 days after the official canvass.

~~(5)(e)~~ If a question submitted to the vote of the people of a multicounty district is decided by a margin not exceeding 1/4 of 1% of the total votes cast for and against the question, ~~and~~ a petition as set forth in subsection ~~(1) may be~~ (1)(a) is filed with the secretary of state. This petition must be signed by not less than 25 electors of the district, representing at least two counties, and must be filed within 5 days after the official canvass.

(f) if a canvassing board petitions for a recount as provided in 13-15-403.

~~(6)~~ The (2) When a recount is required under subsection (1)(b), (1)(d), or (1)(e), the secretary of state shall immediately notify each election administrator

by certified mail of the filing of the petition, and a recount ~~shall~~ *must* be conducted in all precincts in each *affected* county.

~~(7) If during a canvass of election returns a board of county canvassers finds an error, as provided in 13-15-403, the board immediately may file a petition with the election administrator."~~

**Section 57.** Section 13-16-303, MCA, is amended to read:

**"13-16-303. Presumption of incorrectness from failure to comply with provisions for counting votes.** If it appears from a verified application that the election judges failed to comply with the provisions of ~~13-15-202~~ [section 2], that is sufficient cause for believing that the election judges did not correctly ascertain the number of votes cast for the applicant or ballot issue."

**Section 58.** Section 13-16-411, MCA, is amended to read:

**"13-16-411. Individuals entitled to appear at recount—opening and recount of ballots.** (1) Representatives of the news media may be present at the recount. The recount ~~shall~~ *must* be public, but the audience may be limited to prevent interference with the procedures.

(2) Each candidate involved in a recount may appear, personally or by representative, and ~~shall~~ *must* have full opportunity to witness the ~~opening of all ballot boxes and the count of all ballots~~ *entire recount process*.

(3) If the recount is ~~upon~~ *on* a ballot issue, one qualified elector favoring each side of the question may be present ~~and represent his side~~.

~~(4) The recount shall proceed as provided in 13-16-412 and as expeditiously as possible until completed."~~

**Section 59.** Section 13-16-412, MCA, is amended to read:

**"13-16-412. Procedure for recounting paper ballots.** ~~The county recount board in recounting the ballots shall count, at the same time, the votes cast in the precincts in which a recount is ordered for the several candidates in whose behalf a recount is ordered in the following manner:~~

(1) ~~The~~ *To conduct a recount of paper ballots:*

(a) ~~the~~ *the* election administrator shall ~~produce~~ *provide* to the recount board, unopened, each sealed package or envelope received from the election judges of the precinct or precincts in which a recount is ordered, containing all ~~the~~ *paper* ballots voted in the precinct or precincts;

~~(2)—A~~ (b) ~~a~~ *a* member of the ~~county~~ *county* recount board shall open each sealed package or envelope and remove the ballots, ~~and the board shall count the votes on each ballot in the manner provided in [section 2(2)]; and-~~

~~(3) One of the members of the board shall read each ballot aloud. As the ballots are read, two clerks shall write the votes cast for each individual in each precinct, at full length,~~

(c) ~~the~~ *the* recount ~~must~~ *must* be tallied on previously prepared tally sheets. The tally sheets ~~shall~~ *must* show the names of the respective candidates, the office or offices for which a recount is made, and the number of each election precinct.

(2) *To prepare for a recount of ballots cast using a nonpaper-based voting system, the election administrator and election judges shall proceed as provided in rules adopted pursuant to [section 3] and the recount board shall conduct the recount as provided in 13-16-414."*

**Section 60.** Section 13-16-414, MCA, is amended to read:

**“13-16-414. Recount of votes cast by voting devices using voting system.** (1) ~~The (a) Before a voting system may be used to automatically recount votes, the~~ recount board shall test the automatic tabulating equipment ~~used for votes cast by voting devices in accordance with rules adopted pursuant to [section 3].~~

(b) If the test does not show any errors, the votes cast for the candidates or on the issues for which a recount is ordered ~~shall~~ must be recounted by the tabulating equipment as provided in [section 2(3)].

~~(2)(c) (i) If any errors are found in the test or if any questions remain as to the accuracy of the count voting system, the board may shall have the program and equipment system checked by a qualified individual who did not participate in the original preparation of the program and equipment system.~~

~~(ii) If the errors are corrected, the recount must proceed as provided in [section 2(3)].~~

~~(iii) If the errors are not corrected, the recount must be conducted as provided in subsection (3).~~

~~(3)(2) The board may also order manual counting of the votes cast a recount, which must be conducted as provided in subsection (3), if they believe it the board unanimously agrees that a recount is necessary to resolve all questions relating to the election.~~

~~(4) The board may remove the seals from any voting device and check the ballot on the device with the official certification of the ballot arrangement for each precinct.~~

~~(5) Any paper ballots voted in a precinct shall be recounted as prescribed in 13-16-412.~~

~~(6) Write in votes shall be recounted in the same manner as the count is made after the closing of the polls.~~

~~(3) (a) A recount of paper ballots under this subsection (3) must be conducted manually as provided in [section 2(2)].~~

~~(b) A recount of ballots cast using a nonpaper-based system must be conducted as provided in rules adopted under [section 3].”~~

**Section 61.** Section 13-16-417, MCA, is amended to read:

**“13-16-417. Sealing ballots, machines, or devices and voting systems.**

(1) When ~~the~~ a recount in a precinct of paper ballots that was conducted using a voting system has been finished, each ballot ~~shall~~ must again be sealed in the same package or envelope in the presence of the election administrator and the county recount board and ~~shall~~ must be delivered to the election administrator for custody.

(2) All voting machines or devices from which seals have been removed ~~shall be resealed in the presence of the election administrator and the recount board and shall be delivered to the election administrator for custody~~ systems must be secured as provided in rules adopted under [section 3].

(3) All other materials used in the recount that are required to be sealed ~~shall~~ must be resealed in the same manner and delivered to the election administrator for custody.”

**Section 62.** Section 13-16-420, MCA, is amended to read:

**“13-16-420. Misplaced or missing paper ballots.** If during a recount the county recount board discovers that ballots are misplaced or missing, it may petition the election administrator to inspect all sealed *paper* ballots within the county precincts to find the misplaced or missing ballots. Upon receiving the petition, the election administrator shall inspect the sealed ballots to find the misplaced or missing ballots. Upon completion of the recount, the misplaced or missing ballots must be placed in their proper precinct and sealed with the remaining ballots.”

**Section 63.** Section 13-17-101, MCA, is amended to read:

**“13-17-101. Secretary of state to approve voting machines and devices systems.** (1) ~~Before any~~ A voting machine or device can system may not be used for any election in this state; ~~unless the system is approved by the~~ secretary of state as provided in this section.

(2) The secretary of state shall:

(a) examine ~~the machine or device~~ a voting system proposed for use to determine if it complies with the requirements of ~~this chapter~~ 13-17-103;

(b) within 30 days after examining ~~a machine or device~~ the voting system, file a report of the examination in ~~his~~ the secretary of state's office;

(c) include in the report the reasons for ~~the use of the machine or device~~ the voting system's approval or disapproval ~~of the use of the machine or device~~ and ~~his~~ the secretary of state's opinion ~~of about~~ the economic and procedural impact ~~of that~~ the voting system's use ~~or nonuse of the machine or device by~~ may have on the various classes of counties of this state; and

(d) within 5 days after filing the report, transmit to ~~the~~ each election administrator, ~~including school election administrators for elections under Title 20, chapter 20, of each county~~ a copy of the report.

~~(2)(3)~~ Voting machines and devices systems may not be used in an election unless approved by the secretary of state 60 days or more prior to the election at which they will be used.”

**Section 64.** Section 13-17-102, MCA, is amended to read:

**“13-17-102. Use of qualified technicians and advisors advisers** (1) ~~The~~ To the extent that funds are available, the secretary of state may employ and compensate qualified technicians and ~~advisors who are electors of this state~~ advisers to assist ~~him~~ in carrying out the secretary of state's duties required by 13-17-101. ~~Advisors who are public officers or employees shall serve without additional compensation other than expenses of attending the examination if the examination takes place during their regular working hours.~~

(2) ~~The person or company~~ An entity submitting a machine or device voting system for examination shall pay the compensation and expenses of technicians and advisors connected with the examination to the secretary of state for deposit in the state general fund ~~certain costs connected with the examination based on an agreement reached between the two parties. The secretary of state and the person or company shall reach agreement on the number of technicians and advisors to be compensated before the examination is held.~~

**Section 65.** Section 13-17-103, MCA, is amended to read:

**“13-17-103. Required specifications for equipment voting systems.** (1) A voting machine or device system may not be approved under 13-17-101 unless the voting system:

- (1)(a) allows an elector ~~can~~ to vote in secrecy;
- (2)(b) prevents an elector ~~is prevented~~ from voting for any candidate or ~~upon~~ on any ballot issue more than once ~~and is also prevented from~~;
- (c) prevents an elector from voting on any office or ballot issue for which ~~he~~ the elector is not entitled to vote;
- (3)(d) ~~an elector can secretly select the party for which he wishes to vote in a primary election and the machine or device will count only votes~~ allows an elector to vote only for the candidates of ~~that~~ the party selected by the elector in the primary election;
- (4)(e) allows an elector ~~can~~ to vote a split ticket in a general election if ~~he~~ the elector desires;
- (5) ~~every~~ (f) allows each valid vote cast ~~is~~ to be registered and recorded within the performance standards adopted pursuant to subsection (2);
- (6)(g) ~~the machine or device is constructed so that it cannot be tampered with for a fraudulent purpose and is also constructed so that during the progress of the voting no~~ may be protected from tampering for a fraudulent purpose;
- (h) prevents an individual ~~can see or know~~ from seeing or knowing the number of votes registered for any candidate or on any ballot issue during the progress of voting;
- (7)(i) ~~it~~ allows write-in voting; and
- (8)(j) will, if purchased by a jurisdiction within the state, be provided with a guarantee ~~to provide that the training and technical assistance will be provided to election officials is included in each~~ under the contract for purchase of the ~~machine or device~~ voting system.

(2) To implement the provisions of subsection (1)(f), the secretary of state shall adopt rules setting a benchmark performance standard that must be met in tests by each voting system prior to approval under 13-17-101. The standard must be based on commonly accepted industry standards for readily available technologies.”

**Section 66.** Section 13-17-104, MCA, is amended to read:

**“13-17-104. Providing voting machines or devices systems — payment.** (1) The county governing body may, as practicable, provide for the use of any approved voting machines or devices as practicable system approved pursuant to 13-17-101.

(2) Funds for voting machines or devices systems may be provided by the same methods available for other capital equipment purchases by the county.

(3) The governing body of a county may put the question of purchasing voting machines or devices systems or the question of which type of voting machine or device system to purchase to the registered electors of the county by the same method that any other question is referred to the electors.

(4) A county governing body may, in the manner provided in rules adopted under 13-17-107, submit a voting system for consideration under 13-17-101.”

**Section 67.** Section 13-17-105, MCA, is amended to read:

**“13-17-105. Experimental use of machines or devices voting systems.** The governing body of a county may, without adoption or purchase of the voting system, provide for the experimental use in one or more precincts at an election of a voting machine or device system that has been approved by the secretary of

state in one or more precincts without a formal adoption or purchase of the machine or device under 13-17-101. ~~Its~~ The voting system's use at the election is valid for all purposes as if the equipment system had been formally adopted or purchased by the county."

**Section 68.** Section 13-17-106, MCA, is amended to read:

**"13-17-106. General application of election laws to apply.** All laws applicable to elections ~~where~~ when voting is not done by machine or device using a voting system and all penalties prescribed for violations of those laws apply to elections and precincts ~~where~~ when voting machines or devices systems are used if ~~they~~ those laws are not in conflict with the provisions of this chapter."

**Section 69.** Section 13-17-107, MCA, is amended to read:

**"13-17-107. Secretary of state to prescribe rules.** (1) The secretary of state may prescribe rules for the submission of voting machines and devices systems for examination and additional requirements for approval of machines and devices voting systems.

(2) The secretary of state shall prescribe rules for the complete procedures necessary to use each type of voting machine or device system now approved for use in this state and for each type of machine or device system approved for use under the provisions of this chapter."

**Section 70.** Section 13-17-201, MCA, is amended to read:

**"13-17-201. Election administrator to instruct election judges.** (1) Before each election in which a voting system is used, the election administrator shall instruct all election judges in the use of the machines or devices. ~~He shall give to each election judge who has received instruction and is fully qualified to conduct an election with the machine a certificate to that effect system as provided in 13-4-203.~~

(2) A chief election judge may not serve in a precinct where a voting machines or devices are system is used unless ~~he~~ the judge has received the required instruction, is fully qualified to perform duties in connection with the machine or device system, and has received a certificate to that effect from the election administrator."

**Section 71.** Section 13-17-203, MCA, is amended to read:

**"13-17-203. Publication of information concerning machines or devices voting systems.** Not more than 10 or less than 3 days before an election at which a voting machines or devices system will be used, the election administrator shall publish on radio or television, as provided in 2-3-105 through 2-3-107, or in a newspaper of general circulation in the county:

(1) a diagram showing the voting machine or device system and ballot arrangement (in newspaper only);

(2) a statement of the locations where voting machines or devices systems are on public exhibition;

(3) ~~illustrated~~ instructions on how to vote."

**Section 72.** Section 13-17-204, MCA, is amended to read:

**"13-17-204. Voting machines or devices systems to be exhibited.** A voting machine or device shall system must be on exhibition in the office of the election administrator of counties any county where such equipment the voting system is used and may be exhibited at other locations. The election

administrator shall demonstrate the voting ~~machine or device~~ system to any inquiring elector.”

**Section 73.** Section 13-17-206, MCA, is amended to read:

**“13-17-206. Arrangement of machine ballot voting system ballot.** The order and arrangement of ballots to be used with voting ~~machines or devices~~ ~~shall~~ systems must be the same as paper ballots insofar as possible and ~~shall~~ must be prescribed by the secretary of state ~~before each election~~ in accordance with rules adopted pursuant to 13-12-202.”

**Section 74.** Section 13-17-305, MCA, is amended to read:

**“13-17-305. Request to use paper ballots.** (1) ~~(a) Where voting machines are~~ When a nonpaper-based voting system is used, an elector may request to vote by paper ballot instead of using the ~~machine~~ system. The election judges shall provide the elector with a paper ballot when requested.

~~(b) Where voting devices are used, the election administrator, with approval of the governing body of the county if the election administrator is an appointed official, may provide paper ballots if the election administrator believes such ballots are necessary. However, if more than 5% of the electors voting in the last preceding general election voted using paper ballots, the election administrator shall provide paper ballots.~~

(2) The printing of paper ballots provided pursuant to this ~~subsection~~ section is an allowable election cost under the provisions of 13-1-302.

~~(2)(3) Paper ballots shall~~ A paper ballot provided pursuant to this section must be cast according to proper instructions and counted by the election judges in the manner provided by law in [section 2].

~~(3) For the purposes of this section, “voting machine” means a mechanical apparatus which is used for voting by using levers which provide a tabulating system within the machine.”~~

**Section 75.** Section 13-17-306, MCA, is amended to read:

**“13-17-306. Use of separate paper ballots for voting on certain candidates or issues.** ~~Whenever~~ Subject to 13-12-202, whenever a voting ~~machine or device does not allow proper lockout or~~ system does not allow adequate space for ~~the~~ all candidates for all offices or for all ballot issues, separate paper ballots may be used for some or all offices or ballot issues if written authorization is given to the election administrator by the secretary of state.”

**Section 76.** Section 13-19-106, MCA, is amended to read:

**“13-19-106. General requirements for mail ballot election — exception for county building code jurisdiction election.** A mail ballot election must be conducted substantially as follows:

(1) ~~Official~~ Subject to 13-12-202, official mail ballots must be prepared and all other initial procedures followed as ~~otherwise~~ provided by law, except that mail ballots *must be paper ballots* and are not required to have stubs.

(2) (a) Except as provided in subsection (2)(b), an official ballot must be mailed to every qualified elector of the political subdivision conducting the election.

(b) In an election to determine whether to adopt a building code enforcement program within a county jurisdictional area, as defined in 50-60-101 and designated by a board of county commissioners pursuant to 50-60-310, an

official ballot must be mailed to every record owner of real property in the county jurisdictional area.

(3) Each return/verification envelope must contain a form prescribed by the secretary of state for the elector to verify the accuracy of the elector's address or notify the election administrator of the elector's correct mailing address and to return the corrected address with the voted ballot in the manner provided by 13-19-306.

(4) The elector shall mark the ballot ~~at home~~ and place it in a secrecy envelope.

(5) The elector shall then place the secrecy envelope containing the elector's ballot in a return/verification envelope and shall return it by mailing it or delivering it in person to a place of deposit designated by the election administrator so that it is received before a specified time on election day.

(6) Once returned, election officials shall first qualify the submitted ballot by examining the return/verification envelope to determine whether it is submitted by a qualified elector who has not previously voted.

(7) If the ballot qualifies and is otherwise valid, officials shall then open the return/verification envelope and remove the secrecy envelope, which is then voted by depositing it unopened in an official ballot box.

(8) After the close of polls on election day, voted ballots must be counted and canvassed as ~~otherwise provided by law in chapter 15.~~

**Section 77.** Section 13-19-309, MCA, is amended to read:

**"13-19-309. Disposition of ballots returned by mail.** (1) Upon receipt of each return/verification envelope, election officials shall:

(a) compare the name with the official register to determine that the person has not previously voted;

(b) verify the signature on the affidavit in the manner provided by 13-19-310;

(c) open the return/verification envelope and retain it as an official record;

(d) remove and examine the secrecy envelope to determine if the ballot is valid pursuant to 13-19-311;

(e) if the ballot is valid, record the name of the elector in the official register as having voted; and

(f) deposit the unopened secrecy envelope containing the ballot in the official ballot box.

(2) If at any point there is a question concerning ~~a~~ *the validity of a* particular ballot, the ~~election administrator may not deposit the ballot in question. The election administrator shall retain all materials relating to the questioned ballot until the question is must be resolved satisfactorily or the question is determined~~ as provided in 13-19-314."

**Section 78.** Section 13-19-312, MCA, is amended to read:

**"13-19-312. Procedure at close of voting Counting procedure.** (1) ~~After~~ *Except as provided in subsection (2), after* the close of voting on election day, ~~election officials~~ *the counting board appointed pursuant to [section 1]* shall:

(a) open the official ballot boxes;

(b) open each secrecy envelope, removing the ballot; and



(c) proceed to count the votes as ~~otherwise provided by law in chapter 15.~~

(2) On election day, the election administrator may begin the procedures described in subsection (1) before the polls close if ~~he the election administrator~~ complies with the procedures described in 13-15-103 (3)."

**Section 79.** Section 13-19-314, MCA, is amended to read:

**"13-19-314. Resolving issues ballots in question.** Any questions concerning the validity of a ballot or signature must be resolved in the following manner:

(1) If the election administrator is unable to ~~resolve the issue to his satisfaction~~ determine without doubt whether a ballot is valid or invalid, ~~he the election administrator~~ shall give notice to the elector as provided in 13-19-313.

(2) If ~~the elector fails to appear or, if even after such an appearance, the issue is still not resolved to, subsequent to following the procedure in 13-19-313, the election administrator's satisfaction, the election administrator is still unable to determine without doubt whether the ballot is valid or invalid, the election administrator~~ shall present the issue for a determination to the counting board of judges appointed pursuant to [section 1] ~~to count the ballots.~~

(3) If a majority of the counting board is unable to ~~resolve the issue to its satisfaction~~ agree on whether the ballot is valid or invalid, it may not count the ballot in question. ~~Instead,~~ and the election administrator shall present the ~~issue~~ ballot to the board of canvassers for a determination of the issue.

(4) If a majority of the board of canvassers is unable to ~~resolve the issue~~ agree that the ballot is valid, the ballot is invalid and ~~must~~ may not be counted."

**Section 80.** Section 13-25-101, MCA, is amended to read:

**"13-25-101. Nomination of electors — ballot.** (1) Each political party qualified under 13-10-601 shall nominate presidential electors for this state and file certificates of nomination for these candidates with the secretary of state in a form prescribed by the secretary of state no later than 76 days before the general election, in the manner and number provided by law. However, in the event of the death of a candidate for president or vice president, a new candidate for president or vice president, or both, may be nominated for the affected political party and certificates of election may be filed with the secretary of state less than 76 days before a general election.

(2) The secretary of state shall certify to the election administrator the names of the candidates for president and vice president of the several political parties, which must be placed on the ballot by one of the methods provided in 13-12-204. If the name of a new candidate for president or vice president, or both, is certified to the secretary of state in less than 76 days pursuant to subsection (1), the secretary of state shall immediately certify the new name or names to the election administrators and the new name or names must be placed on the ballot by one of the methods provided in 13-12-204.

(3) The names of candidates for electors of president and vice president may ~~not be printed upon~~ appear on the ballot."

**Section 81.** Section 13-27-501, MCA, is amended to read:

**"13-27-501. Secretary of state to certify ballot form — abbreviated ballot.** (1) The secretary of state shall furnish to the official of each county responsible for preparation ~~and printing~~ of the ballots, at the same time as ~~he the election administrator~~ certifies the names of the persons who are candidates

for offices to be filled at the election, a certified copy of the form in which each ballot issue to be voted on by the people at that election is to appear on the ballot.

(2) Except as provided in subsection (4), the secretary of state shall list for each issue:

- (a) the number;
- (b) the method of placement on the ballot;
- (c) the title;
- (d) the attorney general's explanatory statement, if applicable;
- (e) the fiscal statement, if applicable; and

(f) the statements of the implication of a vote for or against the issue that are to be placed beside the diagram for marking the ballot.

(3) When required to do so, the secretary of state shall use for each ballot issue the title of the legislative act or legislative constitutional proposal or the title provided by the attorney general or district court. Following the number of the ballot issue, the secretary of state, when required to do so, shall include one of the following statements to identify why the issue has been placed on the ballot:

- (a) an act referred by the legislature;
- (b) an amendment to the constitution proposed by the legislature;
- (c) an act of the legislature referred by referendum petition; or
- (d) a law or constitutional amendment proposed by initiative petition.

(4) The county election administrator may, at least 14 days prior to the deadline for ballot certification by the secretary of state, request in writing that ~~he~~ *the county election administrator* be furnished an abbreviated form of the certified ballot. The secretary of state shall furnish to all counties from which ~~he~~ *the secretary of state* has received such a request a certified ballot containing only the information in subsections (2)(a), (2)(e), and (2)(f). If the county election administrator requests that the abbreviated ballot be prepared, copies of the information contained in subsections (2)(a) through (2)(f) must be distributed to each elector by an election judge as the elector enters the polling place."

**Section 82.** Section 13-27-502, MCA, is amended to read:

**"13-27-502. Preparation of ballots by county officials with ballot issues** (1) Each of the county officials responsible for the preparation ~~and printing~~ of the ballots shall ~~print~~ *provide* for the ballot issues *to appear* on the official ballot in the form and order in which the issues have been certified by the secretary of state.

(2) All ballot issues ~~shall~~ *must* be placed on the *same* official ballot ~~prescribed by 13-12-207, 13-12-212, and 13-17-206 as the candidates unless the secretary of state provides the election administrator with specific written approval by the secretary of state for placing the ballot issues on a~~ *for* separate ballot ~~is received by the official responsible for printing the ballot ballots.~~ The secretary of state may issue ~~such an~~ approval only when the number of issues to be voted on at an election makes it impractical to print the entire ballot, including the ballot issues, on the *same* official ballot ~~as prescribed by 13-12-207, 13-12-212, and 13-17-206 the candidates.~~"

**Section 83.** Section 13-35-202, MCA, is amended to read:

**“13-35-202. Conduct of election officials and election judges.** An election officer or judge of an election may not:

- (1) deposit in a ballot box a *paper* ballot ~~on which the that is not marked as official stamp, as provided by law, does not appear;~~
- (2) ~~prior to examine an elector's ballot before~~ putting the ballot ~~of an elector~~ in the ballot box, ~~attempt to find out any name on the ballot or open or examine the folded ballot of an elector;~~
- (3) look at any mark made by the elector upon the ballot;
- (4) make or place any mark or device on any ~~folded~~ ballot with the intent to ascertain how the elector has voted;
- (5) allow any individual other than the elector to be present at the marking of the ballot except as provided in 13-13-118 and 13-13-119; or
- (6) make a false statement in a certificate regarding affirmation.”

**Section 84.** Section 13-35-205, MCA, is amended to read:

**“13-35-205. Tampering with election records and information.** A person is guilty of tampering with public records or information and is punishable as provided in 45-7-208 whenever the person:

- (1) suppresses any declaration or certificate of nomination ~~which that~~ has been filed;
- (2) purposely causes ~~the a vote on a machine~~ to be incorrectly recorded as to the candidate or ballot issue voted on;
- (3) in an election return, knowingly adds to or subtracts from the votes actually cast at the election;
- (4) changes any ballot after ~~the same it~~ has been deposited in the ballot box ~~or completed by the elector;~~
- (5) adds ~~any~~ a ballot to those legally polled at an election, either before or after the ballots have been counted, with the purpose of changing the result of the election;
- ~~(5)(6)~~ causes ~~any~~ a name to be placed on the registry lists other than in the manner provided by this title; or
- ~~(6)(7)~~ changes a poll list or checklist.”

**Section 85.** Section 13-35-206, MCA, is amended to read:

**“13-35-206. Injury to election equipment, materials, and records.** A person is guilty of criminal mischief or tampering with public records and information, as appropriate, and is punishable as provided in 45-6-101 or 45-7-208, as applicable, whenever the person:

- (1) prior to or on election day, knowingly defaces or destroys any list of candidates posted in accordance with the provisions of the law;
- (2) during an election:
  - (a) removes or defaces ~~the cards printed for the instruction of instructions~~ for the voters; or
  - (b) removes or destroys any of the supplies or other conveniences placed in the ~~booths or compartments~~ voting station for the purpose of enabling a voter to prepare ~~his~~ the voter's ballot;

- (3) removes any ballots from the polling place before the closing of the polls with the purpose of changing the result of the election;
- (4) carries away or destroys any poll lists, checklists, ballots, ~~or~~ ballot boxes, or other equipment for the purpose of disrupting or invalidating an election;
- (5) knowingly detains, mutilates, alters, or destroys any election returns;
- (6) mutilates, secretes, destroys, or alters election records, except as provided by law;
- (7) tampers with, disarranges, defaces, injures, or impairs a voting machine system with the intent to alter the outcome of an election;
- (8) mutilates, injures, or destroys any a ballot or appliance used in connection with a voting machine system; or
- (9) fraudulently defaces or destroys a declaration or certificate of nomination."

**Section 86.** Section 13-37-126, MCA, is amended to read:

**"13-37-126. Names not to be printed appear on ballot.** (1) The name of a candidate may not be printed appear on the official ballot for an election if the candidate or a treasurer for a candidate fails to file any statement or report as required by this chapter.

(2) A vacancy on an official ballot under this section may be filled in the manner provided by law, but not by the name of the same candidate.

(3) In carrying out the mandate of this section, the commissioner shall, by a written statement, notify the secretary of state or the election administrator that a candidate or a candidate's treasurer has not complied with the provisions of this chapter, as described in subsection (1), and that a candidate's name should not be printed appear on the official ballot. The commissioner shall provide this notification by the ballot certification deadline provided in 13-10-208 for primary elections and by no later than 7 days before the ballot certification deadline provided in 13-12-201 for general elections."

**Section 87.** Section 13-37-250, MCA, is amended to read:

**"13-37-250. Voluntary spending limits.** (1) (a) The following statement may be used in printed matter and in broadcast advertisements and may appear in the voter information pamphlet prepared by the secretary of state: "According to the Office of the Commissioner of Political Practices, ..... is in compliance with the voluntary expenditure limits established under Montana law."

(b) The treasurer of each political committee, as defined in 13-1-101(18)(b), who files a certification on a ballot issue pursuant to 13-37-201 may also file with the commissioner a sworn statement that the committee will not exceed the voluntary expenditure limits of this section. If a sworn statement is made, it must be filed with the commissioner within 30 days of the certification of the political committee.

(c) A political committee that has not filed a sworn statement with the commissioner may not distribute any printed matter or pay for any broadcast claiming to be in compliance with the voluntary expenditure limits of this section.

(d) A political committee may not use evidence of compliance with the voluntary expenditure limits of this section to imply to the public that the committee has received endorsement or approval by the state of Montana.

(2) For the purposes of this section, the expenditures made by a political committee consist of the aggregate total of the following during the calendar year:

- (a) all committee loans or expenditures made by check or cash; and
- (b) the dollar value of all in-kind contributions made or received by the committee.

(3) In order to be identified as a political committee in compliance with the voluntary expenditure limits of this section, the committee's expenditures, as described in subsection (2), may not exceed \$150,000.

(4) A political committee that files with the commissioner a sworn statement to abide by the voluntary expenditure limits of this section but that exceeds those limits shall pay a fine of \$5,000 to the commissioner. This money must be deposited in a separate fund to be used to support the enforcement programs of the office of the commissioner."

**Section 88.** Section 13-38-201, MCA, is amended to read:

**"13-38-201. Election of committeemen at primary.** (1) Each political party shall elect at each primary election one man and one woman ~~who shall to~~ serve as committeemen for each election precinct. The committeemen ~~shall~~ *must* be residents and registered voters of the precinct.

(2) An elector may be placed in nomination for committeeman by a writing so stating, signed by the elector, notarized, and filed in the office of the registrar within the time for filing declarations naming candidates for nomination at the regular biennial primary election.

(3) The names of candidates for precinct committeeman of each political party ~~shall be printed~~ *must appear* on the party ticket in the same manner as other candidates and ~~the voter shall vote are voted for them~~ in the same manner as ~~he does for~~ other candidates."

**Section 89.** Section 20-20-421, MCA, is amended to read:

**"20-20-421. Voting machines and electronic voting systems.** Whenever a voting machines or electronic voting systems are system, as defined in 13-1-101, is available to a district, ~~such the voting devices system may be used for a school election. Any district that uses a~~ *if the voting machine or an electronic voting system shall do so in accordance has been approved pursuant to 13-17-101 and if the election administrator complies with the provisions of chapter 17 of Title 13, chapter 17.* In construing the provisions of that chapter, the "county governing body" and the "election administrator" ~~shall are,~~ for the purposes of this section, ~~be considered to refer to trustees and "county" shall be is considered to refer to district.~~

**Section 90.** Section 76-15-303, MCA, is amended to read:

**"76-15-303. General election — election by acclamation — appointment.** (1) All qualified electors within the district are eligible to vote in the election.

(2) Except as provided in subsection (5), the candidate or, if more than one supervisor position is to be filled by the general election, the candidates who receive the largest number, respectively, of the votes cast in the election are the elected supervisors for the district.

(3) In the general election, the names of the individuals nominated must be ~~printed, as provided under~~ *arranged on ballots as prescribed in 13-12-205, upon*

~~ballots, with a square before each name and a direction to insert an "X" mark in the square before any three names to indicate the elector's preference.~~

(4) The election administrator in each county shall prepare suitable nonpartisan ballots or place the names of candidates on the regular general election ballot in the same manner as other nonpartisan candidates for the election of supervisors. The ballots must be delivered to the election judges in those precincts that contain registered electors prior to each general election and each primary election, if necessary. The election judges and other election officials in the precincts shall submit the ballots to qualified electors, conduct the election, and tabulate the results of the election in the manner provided in Title 13.

(5) (a) Except as provided in subsection (5)(b), if the number of candidates nominated is equal to or less than the number of positions to be elected, the election administrator shall give notice that an election will not be held.

(b) The governing body may require that an election be held if, not more than 10 days after the close of filing by candidates, the governing body passes a resolution to hold an election and notifies the election administrator.

(c) If an election is not held, the governing body shall declare elected by acclamation the candidate who filed a nominating petition for the position. If no candidate has filed a nominating petition for the position, the governing body shall make an appointment to fill the position. Supervisors taking office pursuant to this subsection serve a term as if elected to the position."

**Section 91. Repealer.** Sections 13-12-208, 13-12-209, 13-13-221, 13-15-202, 13-16-413, and 13-17-301, MCA, are repealed.

**Section 92. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 13, chapter 15, part 1, and the provisions of Title 13, chapter 15, part 1, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 13, chapter 15, part 2, and the provisions of Title 13, chapter 15, part 2, apply to [section 2].

(3) [Sections 3 and 4] are intended to be codified as an integral part of Title 13, chapter 17, part 2, and the provisions of Title 13, chapter 17, part 2, apply to [sections 3 and 4].

**Section 93. Coordination instruction.** (1) If House Bill No. 87 is passed and approved, then the bracketed language in the definition of "ballot" contained in the amendment to 13-1-101 in [this act] is void.

(2) If House Bill No. 201 and [this act] are both passed and approved, then:

(a) [section 13] of House Bill No. 201, amending 13-13-211, is void and [section 35] of [this act], amending 13-13-211, must read as follows:

**"Section 35.** Section 13-13-211, MCA, is amended to read:

**"13-13-211. Time period for application.** ~~Am~~ (1) Except as provided in 13-13-222, [section 4 of House Bill No. 201], and subsection (2) of this section, an application for an absentee ballot must be made during a period beginning 75 days before the day of election and ending at noon on the day before the election.

(2) ~~However, a~~ A qualified elector who is prevented from voting at the polls as a result of illness or health emergency occurring between 5 p.m. of the Friday preceding the election and noon on election day may request to vote by absentee ballot as provided in 13-13-212(3)."

(b) [section 16] of House Bill No. 201, amending 13-13-214, is void and [section 37 of this act], amending 13-13-214, must read as follows:

**“Section 37.** Section 13-13-214, MCA, is amended to read:

**“13-13-214. Mailing absentee ballot to elector — delivery to person other than elector.** (1) (a) Except as provided in 13-13-213 and in subsection (1)(b) of this section, as soon as the official *paper absentee* ballots are printed, the election administrator shall *immediately* send by mail, postage prepaid, to each elector from whom the election administrator has received a valid application *under 13-13-211 and 13-13-212* whatever official ballots are necessary. ~~Ballots must be sent immediately to electors submitting valid requests after the official ballots are printed.~~

(b) The election administrator may deliver a ballot in person to an individual other than the elector if:

(i) the elector has designated the individual, either by a signed letter or by making the designation on the application form in a manner prescribed by the secretary of state;

(ii) the individual taking delivery of the ballot on behalf of the elector verifies, by signature, receipt of the ballot;

(iii) the election administrator believes that the individual receiving the ballot is the designated person; and

(iv) the designated person has not previously picked up ballots for four other electors.

(2) The election administrator shall enclose with the ballots:

(a) a secrecy envelope, free of any marks that would identify the voter; and

(b) ~~a self-addressed~~ an envelope for the return of the ballots. ~~An~~ *The envelope must be self-addressed by the election administrator and an affirmation in the form prescribed by the secretary of state must be printed on the back of the envelope.*

(3) The election administrator shall ~~stamp~~ *ensure that* the ballots provided to an absentee elector *are marked* as provided in 13-13-116 and remove the stubs from the ballots, attaching the stubs to the elector’s absentee ballot application.

~~(4) Both the envelope in which the ballot is mailed to an elector in the United States service and the return envelope must have printed across the face the information and graphics and be of the color prescribed by the secretary of state consistent with the regulations established by the federal election commission, the U.S. postal service, or other federal agency.~~

~~(5)~~(4) If the ballots sent to the elector are for a primary election, the election administrator shall enclose an extra envelope marked “For Unvoted Party Ballot(s)”. This envelope may not be numbered or marked in any way so that it can be identified as being used by any one elector.

~~(6)~~(5) Instructions for voting must be enclosed with the ballots. Instructions for primary elections must include use of the envelope for unvoted ballots. The instructions must include information concerning the type or types of writing instruments that may be used to mark the absentee ballot. The instructions must include information regarding use of the secrecy envelope and use of the return ~~and verification~~ envelope. The election administrator shall include a voter information pamphlet with the instructions if:

(a) a statewide ballot issue appears on the ballot mailed to the elector;

(b) the elector is out of the state or will be out of the state at the time of the election; and

(c) the elector requests a voter information pamphlet.

~~(7) The return envelope must be self-addressed to the election administrator."~~

(3) If both [this act] and House Bill No. 190 are passed and approved, then:

(a) [section 40 of this act], amending 13-13-231, is void.

(b) [section 41 of this act], amending 13-13-232, is void.

(c) [section 44 of this act], amending 13-13-241, is void.

(d) [section 45 of this act], amending 13-13-244, must read as follows:

**"Section 45.** Section 13-13-244, MCA, is amended to read:

**"13-13-244. Opening of return envelopes after deposit.** If ~~an~~ a return envelope containing an absentee ballot has been deposited unopened in the ballot box and the envelope has not been marked rejected, the return envelope ~~shall~~ must be opened without a court order and the ballot cast processed as provided in 13-13-241."

Approved April 18, 2003

## CHAPTER NO. 415

[HB 253]

AN ACT INCLUDING INTERNET WEBSITES AS A FORM OF COMMUNICATION COVERED BY ELECTION LAW DISCLOSURE REQUIREMENTS; CLARIFYING THAT A CANDIDATE OR A CANDIDATE'S CAMPAIGN IS ALSO SUBJECT TO DISCLOSURE REQUIREMENTS; AND AMENDING SECTION 13-35-225, MCA.

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

**Section 1.** Section 13-35-225, MCA, is amended to read:

**"13-35-225. Election materials not to be anonymous.** (1) ~~Whenever a person makes an expenditure for the purpose of financing~~ All communications advocating the success or defeat of a candidate, political party, or ballot issue through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, poster, handbill, bumper sticker, *internet website*, or other form of general political advertising, ~~the communication~~ must clearly and conspicuously ~~state~~ include the attribution "*paid for by*" followed by the name and address of the person who made or financed the expenditure for the communication. ~~including in~~ *When a candidate or a candidate's campaign finances the expenditure, the attribution must be the name and the address of the candidate or the candidate's campaign. In the case of a political committee, the attribution must be the name of the committee, the name of the committee treasurer, and the address of the committee or the committee treasurer.*

(2) Communications in a partisan election financed by a candidate or a political committee organized on the candidate's behalf must state the candidate's party affiliation or include the party symbol.

(3) (a) Printed election material described in subsection (1) that includes information about another candidate's voting record must include:



(i) a reference to the particular vote or votes upon which the information is based;

(ii) a disclosure of contrasting votes known to have been made by the candidate on the same issue, if closely related in time; and

(iii) a statement, signed as provided in subsection (3)(b) that to the best of the signer's knowledge, the statements made about the other candidate's voting record are accurate and true.

(b) The statement described in subsection (3)(a) must be signed:

(i) by the candidate if the election material was prepared for the candidate or the candidate's political committee and includes information about another candidate's voting record; or

(ii) by the person financing the communication or the person's legal agent if the election material was not prepared for a candidate or a candidate's political committee.

~~(2)~~(4) If a document or other article of advertising is too small for the requirements of ~~subsection~~ subsections (1) through (3) to be conveniently included, the person financing the communication shall file a copy of the article with the commissioner of political practices, together with the required information, prior to its public distribution.

~~(3)~~(5) If information required in ~~subsection~~ subsections (1) through (3) is inadvertently omitted or not printed, upon ~~discovering~~ discovery of or notification about the omission, the candidate responsible for the material or the person financing the communication shall:

(a) file notification of the omission with the commissioner of political practices within 5 days ~~and~~ of the discovery or notification;

(b) make every reasonable effort to bring the material into compliance with ~~subsection~~ subsections (1) through (3); and

(c) withdraw any noncompliant communications from circulation as soon as reasonably possible."

Approved April 18, 2003

## CHAPTER NO. 416

[HB 256]

AN ACT CLARIFYING THE JURISDICTION OF CAMPUS SECURITY OFFICERS; ALLOWING AGREEMENTS WITH LOCAL LAW ENFORCEMENT AGENCIES TO EXPAND JURISDICTION; AND AMENDING SECTION 20-25-321, MCA.

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

**Section 1.** Section 20-25-321, MCA, is amended to read:

**"20-25-321. Security department members — appointment — campus security officer powers.** (1) The regents of the Montana university system may appoint one or more persons to be members of security departments at each unit of the university system, ~~as such security departments are constituted on July 1, 1971, or may thereafter be constituted.~~ Persons who are qualified under 7-32-303 to be campus security officers and who are employed

and compensated as members of the security departments when so appointed by a security department as campus security officers are peace officers; however, such peace officers shall not and may exercise their authority except:

(a) upon the campuses of the Montana university system and, ~~for campus-related activities,~~ for campus-related activities, an area within 1 mile of the exterior boundaries of each ~~thereof campus; and~~

(b) in or about other grounds or properties owned, operated, controlled, or administered by the regents or any unit of the Montana university system; and

(c) if an agreement is reached under subsection (3), for activities and in areas described in the agreement.

(2) ~~Such Campus security officers shall have no power to~~ may not serve and or execute civil processes.

(3) Any university system security department may seek an agreement with local law enforcement agencies that specifies geographic and subject matter jurisdiction of campus security officers in areas outside the area described in subsections (1)(a) and (1)(b)."

Approved April 18, 2003

## CHAPTER NO. 417

[HB 266]

AN ACT REVISING THE MONTANA TELECOMMUNICATIONS ACCESS PROGRAM; REMOVING THE REQUIREMENT FOR ASSISTING FACILITIES IN OBTAINING INFANT HEARING SCREENING EQUIPMENT; REVISING THE MEANS TEST FOR ELIGIBILITY; DELETING THE REQUIREMENT THAT A FEE BE PAID PRIOR TO DELIVERY OF SPECIAL EQUIPMENT; REQUIRING THE SPECIAL ASSESSMENT ON ALL TELEPHONE ACCESS LINES; AMENDING SECTIONS 53-19-302, 53-19-306, 53-19-307, 53-19-310, AND 53-19-311, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 53-19-302, MCA, is amended to read:

**"53-19-302. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Committee" means the committee on telecommunications access services for persons with disabilities established in 2-15-2212.

(2) "Local exchange company" means a telecommunications company that provides telephone access lines or wireless service to members of the general public who are its customers.

(3) "Mobility-impaired" means the condition of a person with reduced function of the arms and hands making activities related to moving, turning, or pressing objects difficult or impossible. The term includes difficulty in using a wide range of telecommunications equipment.

(4) "Person with a disability" means the condition of a person who is deaf and blind, deaf, hard-of-hearing, speech-impaired, or mobility-impaired.

(5) "Program" means the program established in 53-19-306.

(6) "Specialized telecommunications equipment" means any telecommunications device that enables or assists a person with a disability to communicate with others by means of the conventional telephone network. The term includes but is not limited to text telephones (TTY), amplifiers, signaling devices, puff-blow devices, electronic artificial larynx devices, telebraille, and equipment for the mobility-impaired, ~~and hearing screening equipment.~~

(7) "Telecommunications relay service" means a service that permits full and simultaneous communication between those using specialized telecommunications equipment and those using conventional telephone equipment.

(8) "Telephone access line" means the telephone exchange access line or channel or wireless service that provides the customer of a local exchange company with access to the telecommunications network to effect the transfer of information."

**Section 2.** Section 53-19-306, MCA, is amended to read:

**"53-19-306. Program established — purpose.** (1) The committee shall establish and administer a program to provide specialized telecommunications equipment and services to persons with disabilities ~~and to assist appropriate facilities in obtaining hearing screening equipment that determines if infants have a hearing impairment. The legislature may allocate funds to the Montana school for the deaf and blind to be used for the purposes established in subsection (2).~~

(2) The purpose of the program is to:

(a) furnish specialized telecommunications equipment to meet the needs of persons with disabilities; and

(b) provide a telecommunications relay service system to connect persons with disabilities with all phases of public telecommunications service, including telecommunications service to emergency services and public safety agencies as defined in 10-4-101; and

~~(c) determine if infants are hearing-impaired as early as possible in order to reduce long-term costs in providing assistance.~~

*(3) The legislature may allocate funds from this program to the Montana school for the deaf and blind to be used to provide services to hearing-impaired students for the biennium ending June 30, 2005."*

**Section 3.** Section 53-19-307, MCA, is amended to read:

**"53-19-307. Provision of services.** (1) In administering the program established in 53-19-306 for individuals, the committee shall:

(a) develop an appropriate means test to determine eligibility for participation in the program based on family income of less than ~~250% of the federal poverty level but not more than 400%~~ 250% of the federal poverty level;

(b) require that participants in the program be residents of Montana and that residency be maintained as a condition of eligibility for continued participation in the program;

(c) require that participants provide satisfactory evidence that they have disabilities and would benefit from the use of specialized telecommunications equipment;

(d) provide specialized telecommunications equipment to participants through loan, lease, cost sharing, or other methods that are determined appropriate by the committee;

(e) determine the type of specialized telecommunications equipment that it considers necessary and economically feasible for use by Montana's persons with disabilities;

(f) purchase or lease all specialized telecommunications equipment through bid by wholesale manufacturers on a competitive basis;

(g) require, as a condition of each equipment purchase or lease, that the original manufacturer provide repair and maintenance service for new and returned equipment;

(h) maintain records *for a minimum of 5 years* of each item of equipment, including the location, serial number, and telephone number of each device;

(i) at the discretion of the committee, require an appropriate security deposit for equipment at the time of delivery that must be refunded without interest when the equipment is returned;

(j) make reasonable efforts to recover equipment from those who become ineligible for continued participation in the program;

(k) provide a telecommunications relay service system that would be available statewide for operation 7 days a week, 24 hours a day, including holidays; and

(l) adopt rules necessary to administer the program.

(2) In adopting rules to implement subsections (1)(a) and (1)(d), the committee may, based upon available funds, provide the specialized telecommunications equipment, without charge, to individuals whose family income is less than 250% of the federal poverty level. ~~For individuals whose family income is more than 250% of the federal poverty level but less than 400% of the federal poverty level, the committee shall develop a sliding fee scale. The sliding fee scale must take into account the amount of funds available after providing the equipment to individuals whose family income is less than 250% of the federal poverty level. The fees must increase progressively based upon the increased percentage of family income.~~

~~(3) If a fee is required under the program, the rules must provide that the fee must be received by the program and deposited in the account provided for in 53-19-310 prior to providing the equipment to the individual."~~

**Section 4.** Section 53-19-310, MCA, is amended to read:

**"53-19-310. Fund for telecommunications services for persons with disabilities.** (1) There is an account for telecommunications services for persons with disabilities in the state special revenue fund in the state treasury. The account consists of:

(a) all monetary contributions, gifts, and grants received by the committee as provided in 53-19-309; *and*

(b) all charges billed and collected pursuant to 53-19-311; ~~and~~

~~(c) all fees received pursuant to 53-19-307.~~

~~(2) Unless allocated to the Montana school for the deaf and blind, the Unless allocated to the Montana school for the deaf and blind, the money in the account is allocated to the committee for purposes of implementing this part.~~

(3) All expenditures of the committee in administering this part must be paid from money deposited in the account.”

**Section 5.** Section 53-19-311, MCA, is amended to read:

**“53-19-311. Special assessment.** (1) A charge of 10 cents a month ~~may~~ *must* be assessed on each telephone access line provided and billed by each local exchange company and is imposed for the purposes of this part.

(2) Each customer of a local exchange company is liable for payment to the local exchange company of any charge properly imposed pursuant to this part. The local exchange company is not liable for any uncollected charge, nor does the company have an obligation to take legal action to enforce the collection of any charge that is unpaid by its customers.

(3) Each local exchange company shall bill each customer for the charge provided for in subsection (1). Except as provided in subsection (4), all charges billed and collected by a local exchange company must be transmitted to the state treasurer no later than the last day of the month following the end of each calendar quarter in which the charge is billed. All charges received by the state treasurer must be deposited in the fund established in 53-19-310 to the credit of the committee.

(4) Each local exchange company may deduct and retain 3/4 of 1% of the total charges billed and collected each month to cover its administrative expenses in complying with the requirements of subsection (3).”

**Section 6. Effective date.** [This act] is effective July 1, 2003.

Approved April 18, 2003

## CHAPTER NO. 418

[HB 270]

AN ACT PROHIBITING THE USE OR SALE OF REFRIGERANTS IN MOTOR VEHICLE AND SPECIAL MOBILE EQUIPMENT AIR CONDITIONING SYSTEMS THAT ARE NOT INCLUDED IN THE LIST OF SAFE ALTERNATIVE AIR CONDITIONING SUBSTITUTES PUBLISHED BY THE ENVIRONMENTAL PROTECTION AGENCY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Air conditioning equipment — use of flammable refrigerant prohibited.** (1) Air conditioning equipment must be maintained with due regard for the safety of the occupants of the vehicle, service technicians, and the public.

(2) Air conditioning equipment may contain only refrigerant that has been included in the list published by the United States environmental protection agency as a safe alternative motor vehicle air conditioning substitute for chlorofluorocarbon-12 pursuant to 42 U.S.C. 7671k(c).

(3) A person may not equip or maintain a motor vehicle or special mobile equipment with air conditioning equipment or refrigerants that do not comply with the requirements of this section.

(4) As used in [section 2] and this section, “air conditioning equipment” means mechanical, belt-driven, vapor compression refrigerant equipment that

is used to cool the driver's compartment or passenger compartment of a motor vehicle, as defined in 61-1-102, or special mobile equipment, as defined in 61-1-104.

**Section 2. Air conditioning equipment — sale prohibited.** (1) Refrigerant not allowed to be used pursuant to [section 1] may not be sold for use in motor vehicles in Montana.

(2) Motor vehicles and special mobile equipment with air conditioning equipment that have refrigerants not allowed in [section 1], if installed prior to [the effective date of this act], are not subject to any penalties provided for under Title 61, chapter 9.

**Section 3. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 61, chapter 9, part 4, and the provisions of Title 61, chapter 9, part 4, apply to [sections 1 and 2].

**Section 4. 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 5. Effective date.** [This act] is effective on passage and approval.

Approved April 18, 2003

## CHAPTER NO. 419

[HB 468]

AN ACT REVISING WHAT INFORMATION MUST BE INCLUDED WITH ELECTION MATERIALS; REQUIRING PRINTED ELECTION MATERIALS THAT HAVE INFORMATION ABOUT VOTING RECORDS TO INCLUDE SPECIFIC INFORMATION AND A SIGNED STATEMENT ATTESTING TO THE ACCURACY OF THE INFORMATION; AND AMENDING SECTION 13-35-225, MCA.

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

**Section 1.** Section 13-35-225, MCA, is amended to read:

**“13-35-225. Election materials not to be anonymous — statement of accuracy.** (1) ~~Whenever a person makes an expenditure for the purpose of financing~~ All communications advocating the success or defeat of a candidate, political party, or ballot issue through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, poster, handbill, bumper sticker, or other form of general political advertising, ~~the communication~~ must clearly and conspicuously ~~state~~ include the attribution “paid for by” followed by the name and address of the person who made or financed the expenditure for the communication, ~~including in~~. *When a candidate or a candidate's campaign finances the expenditure, the attribution must be the name and the address of the candidate or the candidate's campaign. In the case of a political committee, the attribution must be the name of the committee, the name of the committee treasurer, and the address of the committee or the committee treasurer.*

(2) Communications in a partisan election financed by a candidate or a political committee organized on the candidate's behalf must state the candidate's party affiliation or include the party symbol.

~~(2)~~(3) (a) Printed election material described in subsection (1) that includes information about another candidate's voting record must include:

(i) a reference to the particular vote or votes upon which the information is based;

(ii) a disclosure of contrasting votes known to have been made by the candidate on the same issue, if closely related in time; and

(iii) a statement, signed as provided in subsection (3)(b), that to the best of the signer's knowledge, the statements made about the other candidate's voting record are accurate and true.

(b) The statement required under subsection (3)(a) must be signed:

(i) by the candidate, if the election material was prepared for the candidate or the candidate's political committee and includes information about another candidate's voting record; or

(ii) by the person financing the communication or the person's legal agent, if the election material was not prepared for a candidate or a candidate's political committee.

(4) If a document or other article of advertising is too small for the requirements of ~~subsection~~ subsections (1) through (3) to be conveniently included, the candidate responsible for the material or the person financing the communication shall file a copy of the article with the commissioner of political practices, together with the required information or statement, ~~prior to~~ at the time of its public distribution.

~~(3)~~(5) If information required in ~~subsection~~ subsections (1) through (3) is ~~inadvertently~~ omitted or not printed, upon ~~discovering~~ discovery or notification about the omission, the candidate responsible for the material or the person financing the communication shall:

(a) file notification of the omission with the commissioner within 5 days of the discovery or notification; ~~and make every reasonable effort to~~

(b) bring the material into compliance ~~with subsection (1); and~~

(c) withdraw any noncompliant communication from circulation as soon as reasonably possible."

Approved April 18, 2003

## CHAPTER NO. 420

[HB 521]

AN ACT REVISING THE LAWS RELATING TO BAIL BONDS; PROVIDING THAT IF A SURETY RETURNS A DEFENDANT WITHIN 90 DAYS OF FORFEITURE OF A BOND THE FORFEITURE MUST BE DISCHARGED WITHOUT PENALTY; ALLOWING A SURETY TO SURRENDER A DEFENDANT TO A DETENTION CENTER FACILITY; AMENDING SECTIONS 46-9-503 AND 46-9-510, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 46-9-503, MCA, is amended to read:

**“46-9-503. Violation of release condition — forfeiture.** (1) If a defendant violates a condition of release, including failure to appear, the prosecutor may make a written motion to the court for revocation of the order of release. A judge may issue a warrant for the arrest of a defendant charged with violating a condition of release. Upon arrest, the defendant must be brought before a judge in accordance with 46-7-101.

(2) If a defendant fails to appear before a court as required and bail has been posted, the judge may declare the bail forfeited. Notice of the order of forfeiture must be mailed to the defendant and the defendant's sureties at their last-known address within 10 working days or the bond becomes void and must be released and returned to the surety within 5 working days.

(3) If at any time within 90 days after the forfeiture the defendant's sureties *surrender the defendant pursuant to 46-9-510* or appear and satisfactorily excuse the defendant's failure to appear, the judge ~~may~~ shall direct the forfeiture to be discharged ~~upon terms as may be just~~ *without penalty*. If at any time within 90 days after the forfeiture the defendant appears and satisfactorily excuses the defendant's failure to appear, the judge shall direct the forfeiture to be discharged upon terms as may be just.

(4) The surety bail bond must be exonerated upon proof of the defendant's death or incarceration or subjection to court-ordered treatment in a foreign jurisdiction for a period exceeding the time limits under subsection (3).

(5) *A surety bail bond is an appearance bond only. It cannot be held or forfeited for fines, restitution, or violations of release conditions other than failure to appear. The original bond is in effect pursuant to 46-9-121 and is due and payable only if the surety fails, after 90 days from forfeiture, to surrender the defendant or if the defendant fails to appear on his own within the same time period.*

**Section 2.** Section 46-9-510, MCA, is amended to read:

**“46-9-510. Surrender of defendant.** (1) At any time before the forfeiture of bail *or within 90 days after forfeiture*:

(a) the defendant may surrender to the court or any peace officer of this state; or

(b) the surety company may arrest the defendant and surrender the defendant to the court, ~~or any peace officer of this state, or any detention center facility of this state.~~

(2) ~~The peace officer or detention center facility shall detain the defendant in the officer's custody as upon commitment and shall file a certificate, acknowledging the surrender, in the court having jurisdiction of the defendant. The court may shall then order the bail exonerated.~~

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

Approved April 18, 2003

## CHAPTER NO. 421

[HB 573]

AN ACT ALLOWING A PARENT OR GUARDIAN OF A DIABETIC STUDENT TO DESIGNATE A SCHOOL DISTRICT EMPLOYEE TO ADMINISTER GLUCAGON TO THE STUDENT IN AN EMERGENCY SITUATION; AND



## LIMITING THE LIABILITY OF THE SCHOOL EMPLOYEE AND A SCHOOL DISTRICT.

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

**Section 1. Definition — parent-designated adult — administration of glucagon — training.** (1) As used in [sections 1 and 2], “parent-designated adult” means a school district employee, selected by a parent or guardian of a diabetic student, who voluntarily agrees to administer glucagon to the student.

(2) A parent or guardian of a diabetic student may designate an adult to administer glucagon to the student as provided in subsection (3). Written proof of the designation by a parent or guardian and acceptance of the designation by the parent-designated adult must be filed with the school district.

(3) A parent-designated adult may administer glucagon to a diabetic student in an emergency situation. The glucagon must be provided by the parent or guardian of the student.

(4) A parent-designated adult must be trained in recognizing hypoglycemia and the proper method of administering glucagon. Training must be provided by a health care professional, as defined in 33-36-103, or a recognized expert in diabetic care selected by the parent or guardian. Written documentation of the training received by the parent-designated adult must be filed with the school district.

**Section 2. Limits on liability.** (1) A parent-designated adult who administers glucagon pursuant to [section 1] is not liable to a person for civil damages resulting from administering the glucagon unless the acts or omission is the result of gross negligence, willful or wanton misconduct, or an intentional tort.

(2) The school district employing the parent-designated adult is not liable to a person for civil damages resulting from the administration of the glucagon unless the acts or omission is the result of gross negligence, willful or wanton misconduct, or an intentional tort.

**Section 3. Two-thirds vote required.** Because [section 2] 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. Codification instruction.** [Sections 1 and 2] are 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 [sections 1 and 2].

Approved April 18, 2003

## CHAPTER NO. 422

[HB 631]

AN ACT PROVIDING THAT A SECURITY INTEREST IN A LIQUOR LICENSE IS CONSIDERED IN DEFAULT IF THERE HAS BEEN A NONJUDICIAL SALE BY THE SECURED PARTY MADE PURSUANT TO THE UNIFORM COMMERCIAL CODE; AMENDING SECTION 16-4-801, 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.** (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; ~~or~~

(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.”

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

Approved April 18, 2003

## CHAPTER NO. 423

[HB 641]

AN ACT PROVIDING FOR NONDISCRIMINATORY PAYMENT OF INTERCARRIER COMPENSATION; DEFINING CERTAIN TERMS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 69-3-803, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 69-3-803, MCA, is amended to read:

**“69-3-803. Definitions.** As used in this part, the following definitions apply:

(1) *“Commercial mobile radio service” means commercial mobile radio service as defined in 47 CFR 20.9.*

~~(1)~~(2) *“Commission” means the public service commission.*

~~(2)~~(3) *“Eligible telecommunications carrier” means a telecommunications provider designated by the commission under 69-3-840.*

~~(3)~~(4) *“Fund” means the universal service fund established in 69-3-842.*

~~(4)~~(5) *“Incumbent local exchange carrier” means, with respect to an area, the local exchange carrier that:*

(a) on February 8, 1996, provided telephone exchange service in the area; and

(b) on February 8, 1996, was considered to be a member of the exchange carrier association pursuant to 47 CFR 69.601(b) or is a person or entity that, after that date, became a successor or assign of a member of the exchange carrier association.

(6) *“Local telecommunications” means:*

(a) *telecommunications originating in a wireline local calling area, including extended area service areas, and terminating in the same wireline local calling area or extended area service area; or*

(b) *commercial mobile radio service that originates from or terminates to a commercial mobile radio service provider within the same major trading area as defined in 47 CFR 24.202(a).*

(7) *“Nonlocal telecommunications” means:*

(a) *wireline telecommunications traffic carried by either an interlocal access transport area carrier or an intralocal access transport area toll provider that originates in one wireline local calling area and terminates in another wireline local calling area; or*

(b) *commercial mobile radio service that originates in a major trading area and terminates in a different major trading area, as defined in 47 CFR 24.202(a).*

(8) *“Originating carrier” means a telecommunications carrier from whose network a customer originates telecommunications traffic.*

~~(5)~~(9) "Private telecommunications service" means a system, including the construction, maintenance, or operation of the system, for the provision of telecommunications service or any portion of the service, by a person or entity for the sole and exclusive use of that person or entity and not for resale, directly or indirectly. For purposes of this definition, the term "person or entity" includes a corporation and all of its affiliates and subsidiaries if the corporation, affiliates, and subsidiaries have a common ownership or control of 80% of the outstanding voting shares.

~~(6)~~(10) (a) "Regulated telecommunications service" means two-way switched, voice-grade access and transport of communications originating and terminating in this state and nonvoice-grade access and transport if intended to be converted to or from voice-grade access and transport.

(b) ~~The~~ *Except as provided in [section 2],* the term does not include the provision of terminal equipment used to originate or terminate the regulated service, private telecommunications service, one-way transmission of television signals, cellular communication, or provision of radio paging or mobile radio services.

~~(7)~~(11) "Retail revenue" means the gross Montana revenue from telecommunications services that originate or terminate in Montana and are billed for a service address in Montana, excluding revenue from the resale of telecommunications services to another telecommunications services provider that uses the telecommunications services to provide telecommunications services to the ultimate retail consumer who originates or terminates the transmission.

~~(8)~~(12) "Rural telephone company" means a local exchange carrier operating entity to the extent that the entity:

(a) provides common carrier service to any local exchange carrier study area that does not include either:

(i) all or any part of an incorporated place of 10,000 inhabitants or more based on the most recently available population statistics of the United States bureau of the census; or

(ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the United States bureau of the census as of August 10, 1993;

(b) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

(c) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

(d) has less than 15% of its access lines in communities of more than 50,000 on February 8, 1996.

~~(9)~~(13) "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing without a change in the form or content of the information upon receipt.

~~(10)~~(14) (a) "Telecommunications carrier" or "carrier" means any provider of telecommunications services. A person providing other products and services in addition to telecommunications services is considered a telecommunications carrier only to the extent that it is engaged in providing telecommunications services.

(b) The term does not mean aggregators of telecommunications services as defined in 47 U.S.C. 226.

(15) *“Terminating carrier” means a telecommunications carrier upon whose network telecommunications traffic terminates.*

(16) (a) *“Transit traffic” means telecommunications traffic that an originating carrier delivers to a transiting carrier or carriers for delivery to a terminating carrier.*

(b) *The term does not mean traffic carried by interlocal access transport area carriers or providers of intralocal access transport area toll services.*

(17) *“Transiting carrier” means a telecommunications carrier or carriers that transport transit traffic from an originating carrier to a terminating carrier and that does not originate or terminate telecommunications traffic.”*

**Section 2. Nondiscriminatory intercarrier compensation — billing records — enforcement — rulemaking.** (1) An originating carrier of local telecommunications service shall transmit with the originating carrier's telecommunications traffic information necessary to enable the terminating carrier to identify, measure, and appropriately charge the originating carrier for the termination of the local telecommunications service.

(2) A provider of intralocal access transport area toll services or any other carrier that provides nonlocal telecommunications services in Montana shall transmit with its telecommunications traffic information necessary to enable the terminating carrier to identify, measure, and appropriately charge for the termination of the telecommunications traffic.

(3) A transiting carrier shall deliver telecommunications traffic to terminating carriers by means of facilities that enable the terminating carrier to receive from the originating carrier any and all information that the originating carrier transmits with its telecommunications traffic that enables the terminating carrier to identify, measure, and appropriately charge the originating carrier or the interlocal access transport area carrier or intralocal access transport area toll provider of nonlocal telecommunications traffic for the termination of its telecommunications traffic.

(4) A transiting carrier is required to provide billing records for its transit traffic to the terminating carrier upon request. The transiting carrier shall provide billing records pursuant to existing policies and agreements until the commission adopts rules pursuant to subsection (7).

(5) A local exchange carrier or commercial mobile radio services provider that delivers local telecommunications traffic to a terminating carrier, directly or indirectly through a transiting carrier, shall, upon request of the terminating carrier, negotiate an interconnection agreement with the terminating carrier, as provided in 69-3-831 through 69-3-839. The interconnection agreement must include rates, terms, and conditions for reciprocal compensation for the transport and termination of local telecommunications traffic.

(6) A telecommunications carrier registered to provide telecommunications services in Montana pursuant to 69-3-805 may file a complaint with the commission requesting enforcement of this section, including enforcement of an agreement approved by the commission under 69-3-839. Upon the filing of a complaint, the commission may authorize the terminating carrier to refuse to terminate traffic from the originating carrier or the commission may authorize interim payments. The commission may order compensation to the terminating carrier and may order other appropriate relief.

(7) The commission shall adopt rules for the implementation of this section. The rules must provide for the expedited resolution of complaints filed pertaining to the provisions of this section. The rules must identify what type of transit records are available and what the cost of the transit records should be and must determine which party is responsible for the payment of detailed call records to the transiting carrier.

**Section 3. Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 69, chapter 3, part 8, and the provisions of Title 69, chapter 3, part 8, apply to [section 2].

**Section 4. 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 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.

**Section 6. Effective date.** [This act] is effective July 1, 2003.

Approved April 18, 2003

## CHAPTER NO. 424

[HB 9]

AN ACT ESTABLISHING PRIORITIES FOR CULTURAL AND AESTHETIC PROJECTS GRANT AWARDS; APPROPRIATING GENERAL FUND AND OTHER MONEY FOR CULTURAL AND AESTHETIC GRANTS; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1. Appropriation of cultural and aesthetic grant funds — priority of disbursement.** (1) The Montana arts council shall award grants for projects authorized by and limited to the amounts appropriated by [section 2] and this section. Money must be disbursed in priority order, first to projects covered under subsection (3) and second to projects listed in [section 2].

(2) The Montana arts council shall disburse money to projects authorized by [section 2] through grant contracts between the Montana arts council and the grant recipient. The award contract must bind the parties to conditions, if any, listed with the appropriation in [section 2].

(3) There is appropriated from the cultural and aesthetic projects account to the Montana historical society \$30,000 for the biennium ending July 1, 2005, for care and conservation of capitol complex artwork.

**Section 2. Appropriation of general fund money and cultural and aesthetic grant funds.** (1) There is appropriated \$249,575 of general fund money in fiscal year 2004 and \$249,575 of general fund money in fiscal year 2005 to the Montana arts council for the projects approved in this section. The general fund appropriation for fiscal year 2004 is a continuing appropriation for the biennium.

(2) The following projects are approved and amounts appropriated to the Montana arts council for the biennium ending June 30, 2005, from the cultural and aesthetic projects account first and from the general fund last:

(a) Category 1 - Special Projects \$4,500 or Less:

Grantee/Amount	
Montana Storytelling Roundup	\$4,500
Miles City Speakers Bureau	4,500
Friends of Chief Plenty Coups Association	4,500
Council for the Arts, Lincoln	2,500
Sunburst Community Service Foundation	2,700
International Choral Festival	4,000
Montana Wool Growers Association	3,700
Crow Tribe	2,250
Hobson Community Library	2,500

(b) Category 2 - Special Projects

Montana Committee for the Humanities	27,000
KUFM-TV, Montana PBS	18,000
Whitefish Theatre Company	12,000
Montana Performing Arts Consortium	20,000
Rattlesnake Productions	15,000
Montana Historical Society	12,000
Montana Preservation Alliance	15,000
MonDak Historical and Art Society	4,500
Grandstreet Theatre	10,000
Art Mobile of Montana	12,500
Glacier Orchestra and Chorale	10,000
Bozeman Symphony	10,000
Montana Alliance for Arts Education	10,000
VIAS, Inc.	10,000
Hockaday Museum of Art	13,000
Rimrock Opera	10,000
Missoula Symphony Association	7,000
Paris Gibson Square	8,000
Going-To-The-Sun Institute	8,000
Yellowstone Ballet Company	3,500
Feathered Pipe Foundation	2,000
Huntley Project Museum of Irrigated Agriculture	4,000
Montana Mandolin Society	1,000

(c) Category 3 - Operational Support

Schoolhouse History and Art Center	16,000
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Custer County Art Center		20,000
Writer's Voice (Billings YMCA)		20,000
Great Falls Symphony Association, Inc.		18,000
Montana Art Gallery Directors' Association		15,000
Holter Museum of Art		16,000
Museum of the Rockies		15,000
Montana Agricultural Center and Museum		12,000
Western Heritage Center		15,000
Billings Symphony Society		15,000
Montana Repertory Theatre		15,000
Shakespeare in the Parks		15,000
VSA Arts of Montana		12,000
Alberta Bair Theatre		15,000
Butte Center for the Performing Arts		15,000
Missoula Children's Theatre, Inc.		15,000
Intermountain Opera		12,000
Montana Association of Symphony Orchestra		8,000
Garnet Preservation Association		12,000
Yellowstone Art Museum		16,000
Rocky Mountain Ballet Theatre		6,000
Montana Ballet Company		5,000
Myrna Loy Center		16,000
Butte Symphony Association		15,000
Vigilante Theatre Company		11,000
District 7 HRDC Growth Thru Art		10,000
Museums Association of Montana		12,000
Emerson Cultural Center		10,000
Carbon County Historical Society		8,000
Montana Arts		10,000
Mo-Trans Dance Company		5,000
Young Audiences of Western Montana		8,000
Gallatin County Historical Society		7,500
Northwest Montana Historical Society		7,500
Montana Dance Arts Association		3,000
Billings Cultural Partners		2,500
Big Horn Arts and Crafts Association		5,000
Carbon County Arts Guild		6,000
Montana Chorale		5,000

(d) Category 4 - Capital Expenditures



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Archie Bray Foundation		16,500
Great Falls Civic Center		10,000
Livingston Depot Foundation		10,000
Lewistown Art Center		2,500
Art Museum of Missoula		15,000
Billings Preservation Society		10,000
Moosehorn Club		2,000
North Missoula Community Development Corporation		5,000
Tobacco Valley Improvement Association Board of Art		5,000
Cascade County Historical Society		5,000

**Section 3. Reversion of grant money.** On July 1, 2005, the unencumbered balance of the 2005 biennium grants revert to the cultural and aesthetic projects account provided for in 15-35-108 and the unencumbered balance of the general fund money reverts to the general fund.

**Section 4. Reduction of grants.** Except as provided in [section 1(3)], if money in the cultural and aesthetic projects account is insufficient to fund projects at the appropriation levels contained in [section 2], reductions to all projects will be made on a pro rata basis.

**Section 5. Effective date.** [This act] is effective July 1, 2003.

Approved April 21, 2003

## CHAPTER NO. 425

[HB 94]

AN ACT REVISING AND CLARIFYING THE PUBLIC PARTICIPATION AND NOTICE REQUIREMENTS FOR OPEN MEETINGS; PROVIDING THAT AN AGENDA FOR AN OPEN MEETING MUST INCLUDE AN ITEM ALLOWING PUBLIC COMMENT ON ANY PUBLIC MATTER WITHIN THE JURISDICTION OF THE AGENCY CONDUCTING THE MEETING; CLARIFYING THAT AN AGENCY MAY NOT TAKE ACTION ON ANY MATTER DISCUSSED UNLESS SPECIFIC NOTICE OF THAT MATTER IS INCLUDED ON AN AGENDA AND PUBLIC COMMENT HAS BEEN ALLOWED; CLARIFYING WHAT CONSTITUTES A PUBLIC MATTER; CLARIFYING THAT THE GOVERNOR'S DUTY TO ENSURE THAT AGENCIES HAVE POLICIES AND PROCEDURES TO FACILITATE PUBLIC PARTICIPATION APPLIES TO THE EXECUTIVE BRANCH OF STATE GOVERNMENT; AMENDING SECTION 2-3-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 2-3-103, MCA, is amended to read:

**"2-3-103. Public participation — governor to insure ensure guidelines adopted.** (1) (a) Each agency shall develop procedures for permitting and encouraging the public to participate in agency decisions that are of significant interest to the public. The procedures shall assure adequate notice and assist public participation before a final agency action is taken that is of significant interest to the public. *The agenda for a meeting, as*

defined in 2-3-202, must include an item allowing public comment on any public matter that is not on the agenda of the meeting and that is within the jurisdiction of the agency conducting the meeting. However, the agency may not take action on any matter discussed unless specific notice of that matter is included on an agenda and public comment has been allowed on that matter. Public comment received at a meeting must be incorporated into the official minutes of the meeting, as provided in 2-3-212.

(b) For purposes of this section, "public matter" does not include contested case and other adjudicative proceedings.

(2) The governor shall ~~insure~~ ensure that each board, bureau, commission, department, authority, agency, or officer of the executive branch of the state adopts coordinated rules for its programs, ~~which~~ The guidelines shall must provide policies and procedures to facilitate public participation in those programs, consistent with subsection (1) of this section. These guidelines shall must be adopted as rules and published in a manner ~~which~~ so that the rules may be provided to a member of the public upon request."

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

Approved April 22, 2003

## CHAPTER NO. 426

[HB 152]

AN ACT REVISING INTERGOVERNMENTAL COOPERATION OF DISASTER AND EMERGENCY SERVICES LAWS; CLARIFYING ACCEPTANCE OF FUNDS RECEIVED FOR FEDERAL REIMBURSEMENT OF MUTUAL AID; REVISING THE STATUTORY APPROPRIATION OF FUNDS RECEIVED FROM THE FEDERAL GOVERNMENT FOR EMERGENCY OR DISASTER SERVICES TO INCLUDE THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR FIRE SUPPRESSION; INCREASING THE STATUTORY APPROPRIATION UNDER THE EMERGENCY POWERS OF THE GOVERNOR FROM \$12 MILLION TO \$16 MILLION; AMENDING SECTIONS 10-3-203 AND 10-3-312, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 10-3-203, MCA, is amended to read:

**"10-3-203. Acceptance of services, gifts, grants, and loans.** (1) Whenever the federal government or any agency or officer of the federal government offers to the state, or through the state to any political subdivision of the state, services, equipment, supplies, materials, or funds by way of gift, grant, *reimbursement of mutual aid*, or loan for purposes of emergency or disaster services, the state, acting through the governor, or the political subdivision, acting through its executive officer or governing body, may accept the offer. Upon the acceptance, the governor of the state or the executive officer or governing body of the political subdivision may authorize any officer of the state or of the political subdivision to receive the services, equipment, supplies, materials, or funds on behalf of the state or political subdivision and subject to the terms of the offer and the rules, if any, of the agency making the offer.

(2) The funds, items, and services set forth in subsection (1) are statutorily appropriated, as provided in 17-7-502, to the governor for the purposes set forth

in subsection (1) or to the department of natural resources and conservation for fire suppression purposes or costs.”

**Section 2.** Section 10-3-312, MCA, is amended to read:

**“10-3-312. Maximum expenditure by governor — appropriation.** (1) Whenever an emergency or disaster 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 ~~\$12-~~ \$16 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 individual and family grant programs as provided in 42 U.S.C. 5178. The statutory appropriation in this subsection may be used by any state agency designated by the governor.”

**Section 3. Effective date.** [This act] is effective July 1, 2003.

Approved April 21, 2003

## CHAPTER NO. 427

[HB 169]

AN ACT REVISING THE LAWS OF LICENSING FOR INSURANCE PRODUCERS, ADJUSTERS, AND CONSULTANTS; PROVIDING FOR INACTIVE STATUS FOR INSURANCE PRODUCERS SERVING IN THE ARMED FORCES; REQUIRING AN INSURANCE PRODUCER LICENSING BACKGROUND EXAMINATION AND PROVIDING EXAMINATION CRITERIA; DEFINING “CAR RENTAL INSURANCE”; REVISING THE PAYMENT OF FEES FOR LICENSES AND RENEWAL OF LICENSES RELATING TO INSURANCE; REVISING THE STATUS OF NONRESIDENT INSURANCE PRODUCERS; PROVIDING FOR BIENNIAL RENEWAL OF LICENSES AND PAYMENT OF BIENNIAL LICENSE FEES FOR CERTAIN PRODUCERS; SIMPLIFYING THE INSURANCE CONTINUING EDUCATION REQUIREMENTS; AMENDING SECTIONS 33-2-305, 33-2-708, 33-7-525, 33-7-532, 33-17-102, 33-17-103, 33-17-201, 33-17-211, 33-17-212, 33-17-214, 33-17-301, 33-17-502, 33-17-503, 33-17-504, 33-17-1001, 33-17-1002, 33-17-1203, 33-17-1205, AND 33-17-1207, MCA; AND PROVIDING AN EFFECTIVE DATE AND APPLICABILITY DATES.

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

**Section 1. Inactive status — insurance producers serving in armed forces.** (1) The commissioner may place an insurance producer on inactive status if the insurance producer enters active service in the armed forces of the United States.

(2) An insurance producer may not transact the business of insurance while on inactive status.

(3) The commissioner shall waive the continuing education requirements in 33-17-1205 and the fee in 33-2-708 while an insurance producer is on inactive status.

(4) In order to be placed on inactive status, an insurance producer shall notify the commissioner when called to active service.

(5) In order to be taken off inactive status, an insurance producer shall notify the commissioner when discharged from active service.

**Section 2. Licensing background examination — entity registry criteria.** (1) (a) Each applicant shall obtain a complete background examination. The applicant or insurer shall pay the cost of the background examination. The background examination report must provide information to confirm:

(i) the applicant's:

(A) identity;

(B) current address;

(C) professional license certification; and

(D) military service; and

(ii) (A) existing or ongoing criminal investigations and court records relating to the applicant; and

(B) regulatory agencies' disciplinary actions concerning the applicant.

(b) The background examination is confidential and may not be held as part of the licensee's public file.

(2) An entity may not conduct licensing background examinations unless the entity maintains a current filing with the commissioner. The filing must:

(a) contain a description of the criteria, standards, and procedures used in conducting the background examination;

(b) ensure that the examination will be based on nationally recognized criteria, standards, and procedures; and

(c) ensure confidentiality of the applicant's information.

(3) The commissioner may adopt rules to further implement this section, including but not limited to rules on the length of time that a background examination is valid and rules for the electronic filing of fingerprints.

**Section 3. Rental car insurance.** Rental car insurance is insurance that:

(1) provides coverage for periods of less than 90 days;

(2) applies only to the rental car subject to the rental agreement; and

(3) is limited to the following kinds of insurance:

(a) personal accident insurance for renters and other rental car occupants, for accidental death or dismemberment, and for medical expenses resulting from an accident that occurs with the rental car during the rental period;

(b) liability insurance that provides protection to the renters and other authorized drivers of a rental car for liability arising from the operation or use of the rental car during the rental period;

(c) personal effects insurance that provides coverage to renters and other vehicle occupants for loss of or damage to personal effects in the rental car during the rental period; or

(d) motor club services, as defined in 61-12-301.

**Section 4. Rulemaking authority for surety insurers.** The commissioner may adopt rules regarding surety insurers who sell, solicit, or negotiate commercial bail bonds. The rules must include but are not limited to rules regarding the receipt of collateral, the description of collateral received, the penalty for failure to return collateral, and an annual list of forfeitures of bonds.

**Section 5. Status of nonresident insurance producers — biennial renewal of license — payment of fees.** A nonresident insurance producer's license continues in force until lapsed, suspended, revoked, or terminated. The license lapses if the licensee fails to remit a biennial renewal fee.

**Section 6.** Section 33-2-305, MCA, is amended to read:

**“33-2-305. Licensing of surplus lines insurance producer — fee and bond.** (1) A person may not place a contract of surplus lines insurance with an unauthorized insurer unless the person is licensed as a property and casualty insurance producer and possesses a current surplus lines insurance license issued by the commissioner.

(2) The commissioner shall issue a surplus lines insurance *producer's* license to any qualified holder of a current property and casualty insurance producer license only if the insurance producer has:

(a) remitted to the commissioner the annual fee prescribed by 33-2-708;

(b) submitted to the commissioner a completed license application on a form supplied by the commissioner; *and*

(c) been licensed as a property and casualty insurance producer continuously for 5 years or more; ~~and~~

~~(d) filed with the commissioner and, for as long as the license remains in effect, kept in force a bond in favor of the state of Montana in the amount of \$10,000, with authorized corporate sureties approved by the commissioner. The bond must be conditioned that the insurance producer will conduct business under the license in accordance with the provisions of The Surplus Lines Insurance Law and that the insurance producer will promptly remit the taxes provided in 33-2-311. The bond may not be terminated unless the surety gives the surplus lines insurance producer, the producing insurance producer, and the commissioner at least 30 days' prior written notice of termination.~~

(3) ~~The license expires on April 1 after its date of issue. A surplus lines insurance producer shall renew the license on or before March 1 of each year upon payment of the annual renewal fee prescribed in 33-2-708. A surplus lines insurance producer who fails to apply for a renewal of the license on or before March 1 shall pay a fine of \$100 before the commissioner renews the license licensee shall renew the license on a form prescribed by the commissioner. The commissioner may establish rules for biennial renewal of the license. A license lapses if not renewed.~~

(4) A corporation is eligible to be licensed as a surplus lines insurance producer if:

(a) the corporate license lists the individuals within the corporation who have satisfied the requirements of this part to become surplus lines insurance producers; and

(b) only those individuals listed on the corporate license transact surplus lines insurance.

(5) This section may not be construed to require agents, producers, or brokers acting as intermediaries between a surplus lines insurance producer and an unauthorized insurer under this part to hold a valid Montana surplus lines insurance producer's license."

**Section 7.** Section 33-2-708, MCA, is amended to read:

**"33-2-708. Fees and licenses.** (1) (a) Except as provided in 33-17-212(2), the commissioner shall collect a fee of \$1,900 from each insurer applying for or annually renewing a certificate of authority to conduct the business of insurance in Montana.

(b) The commissioner shall collect certain additional fees as follows:

(i) nonresident insurance producer's license:

(A) application for original license, including issuance of license, if issued, .....~~100.00~~ \$100;

(B) ~~annual~~ biennial renewal of license, .....~~10.00~~ \$50;

(C) lapsed license reinstatement fee, \$100;

(ii) resident insurance producer's license lapsed license reinstatement fee, \$50;

~~(iii)~~(iii) surplus lines insurance ~~producer~~ producer's license:

(A) application for original license and for issuance of license, if issued, .....~~50.00~~ \$50;

(B) ~~annual~~ biennial renewal of license, .....~~50.00~~ \$100;

(C) lapsed license reinstatement fee, \$200;

(iv) insurance adjuster's license:

(A) application for original license, including issuance of license, if issued, \$50;

(B) biennial renewal of license, \$100;

(C) lapsed license reinstatement fee, \$200;

(v) insurance consultant's license:

(A) application for original license, including issuance of license, if issued, \$50;

(B) biennial renewal of license, \$100;

(C) lapsed license reinstatement fee, \$200;

~~(iii)~~(vi) 50 cents for each page for copies of documents on file in the commissioner's office.

(c) The commissioner may adopt rules to determine the date by which a nonresident insurance producer, a surplus lines insurance producer, an insurance adjuster, or an insurance consultant is required to pay the fee for the biennial renewal of a license.

(2) (a) The commissioner shall charge a fee of \$75 for each course or program submitted for review as required by 33-17-1204 and 33-17-1205, but may not charge more than \$1,500 to a sponsoring organization submitting courses or programs for review in any biennium.

(b) Insurers and associations composed of members of the insurance industry are exempt from the charge in subsection (2)(a).

(3) The commissioner shall promptly deposit with the state treasurer to the credit of the general fund all fines and penalties and those amounts received pursuant to 33-2-311, 33-2-705, and 33-28-201. All other fees collected by the commissioner pursuant to Title 33 and the rules adopted under Title 33 must be deposited in the state special revenue fund to the credit of the state auditor's office.

(4) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of \$10 will be refunded."

**Section 8.** Section 33-7-525, MCA, is amended to read:

**"33-7-525. Insurance producer defined — fraternal benefit society insurance contracts.** (1) The term "insurance producer", as used in this chapter, means any authorized or acknowledged insurance producer of a society who acts as ~~such an insurance producer~~ in the solicitation, negotiation, or ~~procurement or making sale~~ of a life insurance, accident and health insurance, or annuity contract.

(2) The term ~~"insurance producer"~~ does not include any regular salaried officer or employee of a licensed society who devotes substantially all of ~~his~~ *the officer's or employee's* services to activities other than the solicitation of fraternal insurance contracts from the public and who receives for the solicitation of ~~such~~ *the* contracts no commission or other compensation directly dependent upon the amount of business obtained."

**Section 9.** Section 33-7-532, MCA, is amended to read:

**"33-7-532. Producer Insurance producer licensing — fraternal benefit society.** (1) A society's insurance producer ~~must be~~ *is* considered to be an insurance producer and is subject to the same licensing requirements as insurance producers under Title 33, chapter 17, ~~except that an examination is not required of an individual who is licensed in this state as an insurance producer for a society as to the kind of insurance to be transacted on or before October 1, 1981, and who continues to be licensed as an insurance producer.~~

(2) A society doing business in this state may not pay to a person who is not a licensed insurance producer of the society any commission or other compensation for any services in obtaining in this state any new contract of life, accident, or health insurance or any new annuity contract."

**Section 10.** Section 33-17-102, MCA, is amended to read:

**"33-17-102. Definitions.** As used in this title, 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:

- ~~(a)~~(i) licensed attorney who is qualified to practice law in this state;
- ~~(b)~~(ii) salaried employee of an insurer or of a managing general agent;
- ~~(c)~~(iii) licensed insurance producer who adjusts or assists in adjustment of losses arising under policies issued by the insurer; or
- ~~(d)~~(iv) licensed third-party administrator who adjusts or assists in adjustment of losses arising under policies issued by the insurer.

(2) "Adjuster license" means a document issued by the commissioner that authorizes a person to act as an 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 ~~mean~~ 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 it 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 its credit card holders who have authorized it 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) "Administrator license" means a document issued by the commissioner that authorizes a person to act as an administrator.



(5) (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)~~(6) "Consultant" means a person who for a fee examines, appraises, reviews, or evaluates an insurance policy, annuity, or pension contract, plan, or program or who makes recommendations or gives advice on an insurance policy, annuity, or pension contract, plan, or program.

~~(6)~~(7) "Consultant license" means a document issued by the commissioner that authorizes a person to act as an insurance consultant.

~~(7)~~ "Controlled business" means insurance procured or to be procured by or through a person upon the life, person, property, or risks of the person or the person's spouse, employer, or business.

(8) "Individual" means a private or natural person, as distinguished from a partnership, corporation, or association.

(9) "Insurance producer", except as provided in 33-17-103,:

~~(a) means:~~

~~(i) a person who solicits, negotiates, effects, procures, delivers, renews, continues, or binds;~~

~~(A) policies of insurance for risks residing, located, or to be performed in this state; or~~

~~(B) membership contracts as defined in 33-30-101;~~

~~(ii) a managing general agent. For purposes of this chapter, the term "managing general agent" has the same meaning as set forth in 33-2-1501.~~

~~(b) does not mean a customer service representative. For purposes of this definition, a "customer service representative" means a salaried employee of an insurance producer who assists and is responsible to the insurance producer means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance.~~

(10) "Lapse" means the expiration of the license for failure to renew by the biennial renewal date.

~~(10)~~(11) "License" means a document issued by the commissioner that authorizes a person to act as an insurance producer for the ~~kinds of insurance~~ 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.

~~(11)~~(12) "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.

~~(12)~~(13) "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.

~~(13)~~ (14) "Limited lines insurance" means those lines of insurance defined in 33-1-211 through 33-1-219 or any other line of insurance that the commissioner finds necessary to recognize for the purposes of complying with 33-17-401(3).

~~(14)~~ (15) "Limited lines producer" means a person authorized by the commissioner to sell, solicit, or negotiate limited lines insurance.

~~(15)~~ (16) "Lines of authority" means any kind of insurance as defined in Title 33.

(17) "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.

~~(16)~~ (18) "Person" means an individual, ~~partnership, corporation, association, or other legal entity~~ a business entity.

~~(17)~~ (19) "Public adjuster" means an adjuster employed by and representing the interests of the insured.

(20) "Sell" means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company.

(21) "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance.

(22) "Suspend" means to bar the use of a person's license for a period of time.

~~(18)~~ (23) "Uniform application" means the national association of insurance commissioners' uniform application for resident and nonresident insurance producer licensing.

(24) "Uniform business entity application" means the national association of insurance commissioners uniform business entity application for resident and nonresident business entities."

**Section 11.** Section 33-17-103, MCA, is amended to read:

**"33-17-103. Exemptions from definition of insurance producer.** The definition of insurance producer contained in 33-17-102 does not include:

(1) ~~a person~~ an individual who is a regularly salaried officer or employee of an insurer and who is engaged in the performance of usual and customary executive, administrative, or clerical duties and whose duties do not include the negotiation, sale, or solicitation of insurance;

(2) ~~a person~~ an individual who is a salaried employee in the office of an insurance producer and who devotes ~~his~~ the individual's full time to clerical and administrative services, including the incidental taking of insurance applications and receipt of premiums in the office of ~~his~~ the individual's employer, if the ~~employee~~ individual does not receive any commissions on the applications and ~~his~~ the individual's compensation is not varied by the volume of applications or premiums ~~he~~ the individual takes or receives;

(3) a person who secures and furnishes information for the purpose of group life insurance, *group property and casualty insurance*, group annuities, or group or blanket accident and disability insurance or for the purpose of enrolling individuals under ~~such~~ those plans, issuing certificates under ~~such~~ those plans, or otherwise assisting in administering ~~such~~ those plans; if ~~no~~ a commission is not paid for the service;

(4) an employer, ~~his~~ *the employer's* officers, or employees, or the trustees of an employee trust plan, to the extent that the employer, officers, employees, or trustees are engaged in the administration ~~of~~ *or* operation of a program of employee benefits for their own employees or the employees of their subsidiaries or affiliates if the program involves the use of insurance issued by an insurer and the employer, officers, employees, or trustees are not compensated in any manner, directly or indirectly, by the insurer issuing the contracts; ~~or~~

(5) a person who is:

(a) an employee of an insurer or of an organization employed by an insurer, which insurer or organization is engaged in the inspection, rating, or classification of insurance risks or in the supervision of the training of insurance producers; and

(b) not individually engaged in the *selling*, solicitation, or negotiation of insurance policies and contracts;

(6) *an attorney advising a client on general insurance matters, provided the attorney does not sell, solicit, or negotiate insurance;*

(7) *a salaried full-time employee who counsels or advises the employer or the subsidiaries or affiliates of the employer about the life insurance or annuities if the employee does not sell or solicit insurance or receive a commission or fee;*

(8) *a person whose activities in this state are limited to advertising without the intent to solicit insurance in this state through communications in printed publications or other forms of electronic mass media whose distribution is not limited to residents of this state if the person does not sell, solicit, or negotiate insurance contracts with respect to risks located in this state; or*

(9) *a person who is not a resident of this state who sells, solicits, or negotiates a contract of insurance for commercial property and casualty risks with respect to an insured with risks located in more than one state that are insured under the contract if the person is licensed in the state where the insured maintains its principal place of business and the contract insures risks located in that state."*

**Section 12.** Section 33-17-201, MCA, is amended to read:

**"33-17-201. License required of insurance producer — forms — background examinations.** (1) ~~A person may not in this state sell, solicit, or negotiate insurance or act as or hold himself out to be an insurance producer in this state for subjects of insurance located, residing, or to be performed in this state unless licensed as an insurance producer under this chapter.~~

(2) The commissioner may prescribe by rule and make available the forms required in connection with application for, issuance, continuation, *suspension*, or termination of a license.

(3) *All resident applicants shall undergo prelicensing background examinations. The applicant or insurer shall pay the cost of the background examinations.*

(3) ~~Unless licensed as a life insurance producer as required by this section, a person may not in this state solicit life insurance or annuities or procure applications for life insurance or annuities or engage or hold himself out as engaging in the business of analyzing or abstracting life insurance policies or annuities or of counseling or advising or giving opinions, other than as a licensed attorney, relative to insurance or annuities for fee, commission, or other compensation, other than as a salaried full-time employee counseling and advising his employer relative to the insurance interests of the employer and of~~

~~the subsidiaries or business affiliates of the employer or with respect to the insurance interests of employees of the employer, subsidiaries, or affiliates under group insurance or similar insurance plans arranged by the employer or employers of the employees.~~

~~(4) A person licensed to sell coverage only for the all-risk federal crop insurance program shall receive a license restricted to that purpose.~~

~~(5) A representative of a fraternal benefit society who solicits and negotiates insurance contracts is an insurance producer and is subject to the same licensing requirements as those for an insurance producer, except that a license is not required of:~~

~~(a) an officer, employee, or secretary of a fraternal benefit society or of a subordinate lodge or branch of a fraternal benefit society who devotes substantially all of his time to activities other than the solicitation or negotiation of insurance contracts and who receives no commission or other compensation directly dependent upon the number or amount of insurance contracts solicited or negotiated; or~~

~~(b) a representative of a fraternal benefit society who devotes or intends to devote less than 50% of his time to the solicitation and procurement of insurance contracts for the fraternal benefit society. A person who in the preceding calendar year has solicited and procured life insurance with a face amount in excess of \$50,000 or, in the case of any other kind or kinds of insurance that the fraternal benefit society may write, on more than 25 individuals and who has received or will receive a commission or other compensation for the insurance is presumed to be devoting or intending to devote, 50% of his time to the solicitation or procurement of insurance contracts for the fraternal benefit society.~~

~~(6) The commissioner may not grant or extend a license to a person if the license is being or will be used to write controlled business. The commissioner shall consider a license to have been, or intended to be, used for the purpose of writing controlled business if, during any 12 month period, the aggregate amount of premiums on controlled business would exceed the aggregate amount of premiums on all other insurance business of the applicant or licensee."~~

**Section 13.** Section 33-17-211, MCA, is amended to read:

**"33-17-211. General qualifications — application for license.** (1) An individual applying for a license shall apply on a form specified by the commissioner and declare under penalty of refusal, suspension, or revocation of the license that statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner shall verify that the individual:

(a) is 18 years of age or older;

(b) has not committed an act that is a ground for refusal, suspension, or revocation as set forth in 33-17-1001;

(c) has paid the license fees stated in 33-2-708;

(d) has successfully passed the examinations for each kind of insurance for which the individual has applied within 12 months of application;

(e) is a resident of this state or of another state that grants similar privileges to residents of this state. Licenses issued based upon Montana state residency terminate if the licensee relocates to another state.

(f) is competent, trustworthy, and of good reputation;

(g) has experience or training or otherwise is qualified in the kind or kinds of insurance for which the applicant applies to be licensed and is reasonably familiar with the provisions of this code that govern the applicant's operations as an insurance producer; ~~and~~

(h) if applying for a license as to life or disability insurance:

(i) is not a funeral director, undertaker, or mortician operating in this or any other state;

(ii) is not an officer, employee, or representative of a funeral director, undertaker, or mortician operating in this or any other state; or

(iii) does not hold an interest in or benefit from a business of a funeral director, undertaker, or mortician operating in this or any other state; *and*

*(i) has completed a background examination pursuant to [section 2].*

*(2) A resident or nonresident business entity acting as an insurance producer is required to obtain an insurance producer's license. Application must be made using the uniform business entity application. In order to approve the application, the commissioner shall verify that:*

*(a) the business entity has paid the appropriate fee; and*

*(b) the business entity has designated an individual licensed insurance producer who is responsible for the business entity's compliance with the insurance laws of this state.*

~~(2)~~(3) A person acting as an insurance producer shall obtain a license. A person shall apply for a license on a form specified by the commissioner. Before approving the application, the commissioner shall verify that:

(a) the person meets the requirements listed in subsection (1);

(b) the person has paid the licensing fees stated in 33-2-708 for each individual licensed in conjunction with the person's license. A licensed person shall promptly notify the commissioner of each change relating to an individual listed in the license.

(c) the person has designated a licensed officer responsible for compliance by the person with the insurance laws and rules of this state;

(d) each member and employee of a partnership and each officer, director, stockholder, or employee of a corporation who is acting as an insurance producer in this state has obtained a license;

(e) (i) if the person is a partnership or corporation, the transaction of insurance business is within the purposes stated in the partnership agreement or the articles of incorporation; and

(ii) if the person is a corporation, the secretary of state has issued a certificate of existence or authority under 35-1-1312 or filed articles of incorporation under 35-1-220.

~~(3)~~(4) The commissioner may license as a resident insurance producer an association of licensed Montana insurance producers, whether or not incorporated, formed and existing substantially for purposes other than insurance. The license must be used solely for the purpose of enabling the association to place, as a resident insurance producer, insurance of the properties, interests, and risks of the state of Montana and of other public agencies, bodies, and institutions and to receive the customary commission for

the placement. The president and secretary of the association shall apply for the license in the name of the association, and the commissioner shall issue the license to the association in its name alone. The fee for the license is the same as that required by 33-2-708(1)(a). The commissioner may, after a hearing with notice to the association, revoke the license if the commissioner finds that continuation of the license is not in the public interest or that a ground listed in 33-17-1001 exists.

(4)(5) An insurance producer using an assumed business name shall register the name with the commissioner before using it.”

**Section 14.** Section 33-17-212, MCA, is amended to read:

**“33-17-212. Examination required — exceptions — fees.** (1) Except as provided in subsection (6), an individual applying for a license is required to pass a written examination. The examination must test the knowledge of the individual concerning each kind of insurance listed in subsection (5) for which application is made, the duties and responsibilities of an insurance producer, and the insurance laws and rules of this state. The examination must be developed and conducted under rules adopted by the commissioner.

(2) The commissioner may conduct the examination or make arrangements, including contracting with an outside testing service, for administering the examination. The commissioner may arrange for the testing service to recover the cost of the examination from the applicant.

(3) An individual who fails to appear for the examination as scheduled or fails to pass the examination may reapply for an examination and shall remit all forms before being rescheduled for another examination.

(4) If the applicant is a partnership or corporation, each individual who is to be named in the license as having authority to act for the applicant in its insurance transactions under the license shall meet the qualifications as provided in this section.

(5) Examination of an applicant for a license must cover all of the kinds of insurance for which the applicant has applied to be licensed, as constituted by any one or more of the following classifications:

(a) life insurance;

(b) disability insurance;

(c) property insurance. For the purposes of this provision, property insurance includes marine insurance.

(d) casualty insurance;

(e) surety insurance;

(f) ~~credit life and disability~~ *limited lines credit* insurance;

(g) title insurance.

(6) This section does not apply to and an examination is not required of:

(a) an individual lawfully licensed as an insurance producer as to the kind or kinds of insurance to be transacted as of or immediately prior to January 1, 1961, and who continues to be licensed;

(b) an applicant for a license covering the same kind or kinds of insurance as to which the applicant was licensed in this state, other than under a temporary license, within the 12 months immediately preceding the date of application unless the commissioner has suspended, revoked, or ~~refused to continue~~

~~terminated the previous license, except that this subsection (6)(b) does not apply to a title insurance producer, as defined in 33-25-105;~~

(c) an applicant for a license as a nonresident insurance producer;

~~(d) an applicant for a license to sell all-risk federal crop insurance if the applicant provides certification from an appropriate governmental agency to the commissioner that the applicant is qualified to sell the insurance;~~

~~(e)~~(d) transportation ticket agents of common carriers applying for a license to solicit and sell only:

(i) accident insurance ticket policies; or

(ii) insurance of personal effects while being carried as baggage on a common carrier, as incidental to their duties as transportation ticket agents;

~~(f)~~(e) an association applying for a license under 33-17-211;

~~(g) a mechanical breakdown insurance producer;~~

~~(h) a prepaid legal plans producer;~~

~~(i) a gap insurance producer;~~

~~(j) involuntary unemployment insurance producer;~~

~~(k) a credit property insurance, credit unemployment insurance, or mortgage guaranty insurance producer; or~~

~~(l)~~(f) an individual who, within ~~60~~ 90 days of cancellation of a license issued by the state of the individual's residence, files with the commissioner a current letter of clearance certifying that the individual has passed an examination and held an insurance license in good standing in the individual's state of licensure, except that the individual shall take an examination pertaining to this state's law and each kind of insurance for which the individual has applied for a license and that is not covered under the license held in the other state.

(7) (a) Subject to the provisions of subsection (7)(b), an individual who applies for a nonresident insurance producer license in this state and who was previously licensed for the same lines of authority in another state may not be required to complete any prelicensing education or examination.

(b) The exemption in subsection (7)(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 if the other state issues a certification that, at the time of the cancellation, the individual was in good standing in that state or the state's database records, maintained by the national association of insurance commissioners or any of the association's affiliates or subsidiaries that the association oversees, indicate that the insurance producer is or was licensed in good standing for the lines of authority requested."

**Section 15.** Section 33-17-214, MCA, is amended to read:

**"33-17-214. Issuance of license — insurance producer lines of authority — license data — lapse of license — change of address.** (1) A person who has met the requirements of 33-17-211 and 33-17-212 must be issued a license, unless that person has been denied a license pursuant to 33-17-1001.

(2) An insurance producer may receive a license qualifying the insurance producer in one or more of the following lines of authority:

(a) life insurance coverage on human lives, including benefits of endowment and annuities, and the coverage may include benefits in the event of death or dismemberment by accident and benefits for disability income;

(b) accident and health or sickness insurance coverage providing for sickness, bodily injury, or accidental death, and the coverage may provide benefits for disability income;

(c) property insurance coverage for the direct or consequential loss or damage to property of every kind;

(d) casualty insurance coverage against legal liability, including liability for death, injury, or disability or damage to real or personal property;

(e) variable life and variable annuity products insurance coverage provided under variable life insurance contracts and variable annuities;

(f) personal lines of property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes;

(g) limited line credit insurance; or

(h) any other line of insurance permitted under Title 33.

(3) The license must state the name and address of the licensee, personal identification number, date of issuance, general conditions relative to expiration or termination, kind of insurance covered, and other information that the commissioner considers necessary.

(4) The license of a partnership, corporation, or association must also state the name of each individual authorized to exercise the license powers.

(5) Each license remains in effect, unless *it is* suspended, ~~or~~ revoked, *or terminated or the license lapses.*

(6) A person shall inform the commissioner in writing of a change of address within 30 days of the change."

**Section 16.** Section 33-17-301, MCA, is amended to read:

**"33-17-301. Adjuster license — qualifications — catastrophe adjustments — public adjuster.** (1) ~~A person~~ *An individual* may not act as or purport to be an adjuster in this state unless licensed as an adjuster under this chapter. ~~A person~~ *An individual* shall apply for an adjuster license to the commissioner according to forms that the commissioner prescribes and furnishes. The commissioner shall issue the adjuster license to individuals qualified to be licensed as an adjuster.

(2) To be licensed as an adjuster, the applicant:

(a) must be an individual 18 years of age or more;

(b) must be a resident of Montana or resident of another state that will permit residents of Montana regularly to act as adjusters in the other state;

(c) ~~must be a full-time salaried employee of a licensed adjuster or a graduate of a recognized law school or have had experience or special education or training as to the handling of loss claims under insurance contracts of sufficient duration and extent reasonably to make the applicant competent to fulfill the responsibilities of an adjuster~~ *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; and



(e) must have and 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 partnership or corporation, whether or not organized under the laws of this state, may be licensed as an adjuster if each individual who is to exercise the adjuster license powers is separately licensed or is named in the partnership or corporation adjuster license and is qualified for an individual adjuster license.

(4) 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 partnership or corporation 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.

(5) An adjuster license continues in force until ~~expired~~ *lapsed*, suspended, revoked, or terminated. ~~The license is subject to renewal upon written request to the commissioner. 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.~~

(6) The commissioner may adopt rules providing for the examination, licensure, bonding, and regulation of public adjusters.”

**Section 17.** Section 33-17-502, MCA, is amended to read:

**“33-17-502. Prohibition on holding out as consultant — receiving fee.** (1) A person not licensed as an insurance consultant in this state who identifies or represents to the public that the person is an insurance consultant without having been licensed as an insurance consultant under this part or a person who uses any other designation or title that is likely to mislead the public and represents to the public that the person has particular insurance qualifications other than those for which the person may be otherwise licensed or otherwise qualified ~~is guilty of a misdemeanor and upon conviction shall be fined \$1,500~~ *may be fined pursuant to 33-1-317.*

(2) A person not licensed as an insurance consultant with respect to the relevant kinds of insurance who receives a fee for examining, appraising, reviewing, or evaluating any insurance policy, annuity or pension contract, plan, or program or who makes recommendations or gives advice with regard to any insurance policy, annuity or pension contract, plan, or program without first having been licensed by the commissioner as an insurance consultant ~~is guilty of a misdemeanor and upon conviction shall be fined \$1,500~~ *may be fined pursuant to 33-1-317.*

(3) This part does not apply to:

(a) licensed attorneys at law in this state acting in their professional capacity; or

(b) an actuary or a certified public accountant who provides information, recommendations, advice, or services in a professional capacity if neither the actuary nor the certified public accountant or the actuary’s or certified public accountant’s employer receives any compensation directly or indirectly on account of any insurance, bond, annuity or pension contract that results in whole or part from that information, recommendation, advice, or services.”

**Section 18.** Section 33-17-503, MCA, is amended to read:

**“33-17-503. Application — fee — expiration.** (1) Before a consultant license is issued or renewed, the prospective licensee shall:

(a) properly file in the office of the commissioner a written application on forms the commissioner prescribes; and

(b) pay a fee of \$50, which the commissioner shall deposit with the state treasurer to be credited to the state's general fund pursuant to 33-2-708.

(2) ~~Each consultant license must be renewed each year by the consultant paying a continuation fee on or before May 31, and the license continues in force unless suspended, revoked, or otherwise terminated. A consultant license continues in force until lapsed, suspended, revoked, or terminated.”~~

**Section 19.** Section 33-17-504, MCA, is amended to read:

**“33-17-504. Issuing license — limitations.** The commissioner may issue a consultant license to an individual who has complied with the requirements of this chapter with respect to either life insurance, meaning all of those kinds of insurance authorized in 33-1-207, 33-1-208, 33-20-1001, 33-21-103, 33-22-501, and 33-22-601, or general insurance, meaning all of those kinds of insurance authorized in 33-1-206, 33-1-207, 33-1-209 through 33-1-212, ~~33-1-214 through 33-1-219, and 33-1-221 through 33-1-229, as specified in the license.”~~

**Section 20.** Section 33-17-1001, MCA, is amended to read:

**“33-17-1001. Suspension, revocation, or refusal of license.** (1) The commissioner may suspend, revoke, refuse to renew, or refuse to issue an insurance producer's license, *adjuster license, or consultant license*, ~~or~~ may levy a civil penalty in accordance with 33-1-317, or *may choose any combination of actions; when an insurance producer, adjuster, consultant, or applicant for an insurance producer's license those licenses has:*

(a) engaged or is about to engage in an act or practice for which issuance of the license could have been refused;

(b) obtained or attempted to obtain a license through misrepresentation or fraud, *including but not limited to providing incorrect, misleading, incomplete, or materially untrue information in the license application or in the continuing education affidavit;*

(c) violated or failed to comply with a provision of this code or has violated a rule, subpoena, or order of the commissioner or of the commissioner of any other state;

(d) improperly withheld, misappropriated, or converted to the licensee's or applicant's own use money or property belonging to policyholders, insurers, beneficiaries, or others and received in conduct of business under the license;

(e) been convicted of a felony;

(f) in the conduct of the affairs under the license, used fraudulent, coercive, or dishonest practices or the licensee or applicant is incompetent, untrustworthy, financially irresponsible, or a source of injury and loss to the public;

~~(g) made a materially untrue statement in the license application or in the continuing education affidavit;~~

~~(h)~~ (g) misrepresented the terms of an actual or proposed insurance contract or application for insurance;

- ~~(h)~~(h) been found guilty of an unfair trade practice or fraud prohibited by Title 33, chapter 18;
- ~~(i)~~(i) had a similar license suspended or revoked in any other state;
- ~~(j)~~(j) forged another's name to an application for insurance *or to any document related to an insurance transaction*;
- ~~(k)~~(k) cheated on an examination for a license; or
- ~~(m)~~(l) knowingly accepted insurance business from a person who is not licensed.

(2) The license of a partnership or corporation may be suspended, revoked, refused, or denied if a reason listed in subsection (1) applies to an individual designated in the license to exercise its powers.

~~(3) The commissioner may suspend, revoke, or refuse to continue a license under subsection (1)(c) without conducting an investigation pursuant to 37-1-203 or making a written finding pursuant to 37-1-204. The commissioner retains the authority to enforce the provisions of and impose any penalty or remedy authorized by the insurance code against any person who is under investigation for or charged with a violation of the insurance code even if the person's license or registration has been surrendered or has lapsed.~~

**Section 21.** Section 33-17-1002, MCA, is amended to read:

**"33-17-1002. Procedure following suspension or revocation.** (1) Upon suspension, ~~or~~ revocation, *or refusal* of a license, the commissioner shall ~~immediately~~ notify the licensee ~~of the suspension or revocation either in person or~~ *or applicant* by mail addressed to the licensee *or applicant* at ~~his~~ *the* last-known address ~~last of record with contained in the records of the commissioner. Notice by mail is effectuated when the notice is mailed.~~

(2) *The commissioner may reissue a license that has lapsed if the insurance producer has paid the lapsed license reinstatement fee pursuant to 33-2-708 and has filed certification of completion of continuing education requirements for the preceding biennium within 1 year of the lapse occurring.*

~~(2)~~(3) The commissioner may not again issue a license under this code to a person whose license has been revoked until after expiration of 1 year and ~~thereafter not~~ until the person again qualifies for a license in accordance with this code. If the commissioner revokes a person's license, the commissioner may refuse to issue a license to the person for up to 5 years after the revocation. A person whose license has been revoked twice is not again eligible for any license under this code.

~~(3)~~(4) If the license of a partnership or corporation is suspended or revoked, ~~no~~ a member of the partnership or officer or director of the corporation may *not* be licensed or be designated in a license to exercise its powers during the period of the suspension or revocation unless the commissioner determines upon substantial evidence that the member, officer, or director was not personally at fault and did not acquiesce in the matter on account of which the license was suspended or revoked."

**Section 22.** Section 33-17-1203, MCA, is amended to read:

**"33-17-1203. Continuing education — basic requirements — exceptions.** (1) Unless exempt under subsection (4):

- (a) a person licensed to act as an insurance producer ~~for property, casualty, surety, or title insurance~~ or as a consultant ~~for general insurance~~ *other than a*

~~person licensed for limited lines credit insurance shall, during each calendar year 24-month period, complete at least 10 24 credit hours of approved continuing education;~~

~~(b) a person licensed to act as an insurance producer for life or disability insurance or as a consultant for life insurance shall, during each calendar year, complete at least 10 credit hours of approved continuing education;~~

~~(c) a person holding multiple licenses shall, during each calendar year, complete at least 15 credit hours of approved continuing education;~~

~~(d)(b) a person licensed to act as an insurance producer only for limited lines credit life and disability insurance shall, during each calendar year biennium, complete 2 1/2 5 credit hours of approved continuing education in the areas of insurance law, ethics, or credit life and disability limited lines credit insurance;~~

~~(e)(c) a person licensed as an insurance producer or consultant shall, during each biennium, complete at least 1 credit hour of approved continuing education on changes in Montana insurance statutes and administrative rules.~~

(2) If a person licensed as an insurance producer or consultant completes more credit hours of approved continuing education in a year biennium than the minimum required in subsection (1), the excess credit hours may be carried forward and applied to the continuing education requirements of the next year biennium.

(3) The commissioner may, for good cause, grant an extension of time, not to exceed 1 year, during which the requirements imposed by subsection (1) may be completed.

(4) The minimum continuing education requirements do not apply to:

~~(a) a person licensed to sell any kind of insurance for which an examination is not required under 33-17-212(6)(d) through (6)(l);~~

~~(b)(a) a person holding a temporary license issued under 33-17-216; or~~

~~(c) a newly licensed insurance producer or consultant during the calendar year in which the licensee first received a license;~~

~~(d) a person who only executes surety bail bonds; or~~

~~(e)(b) an insurance producer or consultant otherwise exempted by the commissioner."~~

**Section 23.** Section 33-17-1205, MCA, is amended to read:

**"33-17-1205. Compliance — failure to comply — rulemaking authority.** (1) Each person subject to the requirements of 33-17-1203 shall file ~~annually on a form~~ *biennially in a format* supplied by the commissioner ~~written~~ certification as to the approved courses, lectures, seminars, and instructional programs successfully completed by that person during the preceding ~~calendar year~~ *biennium*.

~~(2) The commissioner may suspend the license of any person failing to comply with subsection (1) who has not been granted an extension under 33-17-1203 and may impose a late renewal fee of \$20, which is the same amount previously determined by an administrative rule in effect on November 3, 1998. The suspension must remain in effect until the time that the person demonstrates to the satisfaction of the commissioner that the person has complied with all the provisions of this part. If the license of an insurance producer or consultant is suspended by reason of this section for a period exceeding 12 months, the license must be terminated upon notice to the~~

~~insurance producer or consultant~~ If a person fails to comply with this section, the person's license lapses.

(3) In the continuing education affidavit, an insurance producer shall report to the commissioner the final disposition of any administrative action or the final disposition of any criminal action taken against the insurance producer in another jurisdiction or by another governmental agency in this state. As used in this subsection, "final disposition of any criminal action" means a plea agreement or sentence and judgment.

~~(3)~~(4) Each person providing approved courses, lectures, seminars, and instructional programs, including insurance company education programs, shall file annually with the commissioner an alphabetical list of the names and addresses of all persons who have successfully completed an approved continuing education activity during the preceding calendar year.

~~(4)~~(5) The commissioner may, following the process provided for in 33-1-314, withdraw approval of all courses, lectures, seminars, and instructional programs of any person that fails to comply with subsection ~~(3)~~ (4). The commissioner may, after having conducted a hearing pursuant to 33-1-701, impose a fine upon a person that has failed to comply with subsection ~~(3)~~ (4). The fine may not exceed the penalty permitted by 33-1-317.

(6) The commissioner may adopt rules establishing the requirements for biennial filing and reporting of continuing education credits."

**Section 24.** Section 33-17-1207, MCA, is amended to read:

**"33-17-1207. Funding for continuing education program.** All ~~annual~~ continuing education filing fees collected by the commissioner and fees paid to the commissioner for the review of initial applications for approval of continuing education courses or the periodic review of these courses must be turned over promptly to the state treasurer who shall place the money in the state special revenue fund to the credit of the state auditor's office to be used for the continuing education program. The funds allocated by this section to the state special revenue fund may be used only to defray the expenses of the state auditor's office in discharging its duties as prescribed by this part, subject to the applicable laws relating to the appropriation of state funds and to the deposit and expenditure of state money. The state auditor is responsible for the proper expenditure of this money as provided by law."

**Section 25. Coordination instruction.** If Senate Bill No. 254 and [this act] are passed and approved, then [section 7] of this act, amending 33-2-708, is amended to read:

**"Section 7.** Section 33-2-708, MCA, is amended to read:

**"33-2-708. Fees and licenses.** (1) (a) Except as provided in 33-17-212(2), the commissioner shall collect a fee of \$1,900 from each insurer applying for or annually renewing a certificate of authority to conduct the business of insurance in Montana.

(b) The commissioner shall collect certain additional fees as follows:

(i) nonresident insurance producer's license:

(A) application for original license, including issuance of license, if issued,.....~~100.00~~ \$100;

(B) ~~annual~~ biennial renewal of license.....~~10.00~~, \$50;

(C) lapsed license reinstatement fee, \$100;

- (ii) *resident insurance producer's license lapsed license reinstatement fee, \$100;*
- ~~(iii)~~ (iii) *surplus lines insurance producer producer's license:*
- (A) *application for original license and for issuance of license, if issued, ~~50.00~~ \$50;*
- (B) ~~annual~~ *biennial renewal of license ~~50.00~~, \$100;*
- (C) *lapsed license reinstatement fee, \$200;*
- (iv) *insurance adjuster's license:*
- (A) *application for original license, including issuance of license, if issued, \$50;*
- (B) *biennial renewal of license, \$100;*
- (C) *lapsed license reinstatement fee, \$200;*
- (v) *insurance consultant's license:*
- (A) *application for original license, including issuance of license, if issued, \$50;*
- (B) *biennial renewal of license, \$100;*
- (C) *lapsed license reinstatement fee, \$200;*
- (vi) *resident and nonresident rental car entity producer's license:*
- (A) *application for original license, including issuance of license, if issued, \$100;*
- (B) *quarterly filing fee, \$25;*
- ~~(vii)~~ (vii) *50 cents for each page for copies of documents on file in the commissioner's office.*
- (c) *The commissioner may adopt rules to determine the date by which a nonresident insurance producer, a surplus lines insurance producer, an insurance adjuster, or an insurance consultant is required to pay the fee for the biennial renewal of a license.*
- (2) (a) *The commissioner shall charge a fee of \$75 for each course or program submitted for review as required by 33-17-1204 and 33-17-1205, but may not charge more than \$1,500 to a sponsoring organization submitting courses or programs for review in any biennium.*
- (b) *Insurers and associations composed of members of the insurance industry are exempt from the charge in subsection (2)(a).*
- (3) *The commissioner shall promptly deposit with the state treasurer to the credit of the general fund all fines and penalties and those amounts received pursuant to 33-2-311, 33-2-705, and 33-28-201. All other fees collected by the commissioner pursuant to Title 33 and the rules adopted under Title 33 must be deposited in the state special revenue fund to the credit of the state auditor's office.*
- (4) *All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of \$10 will be refunded."*

**Section 26. Codification instruction.** (1) [Sections 1 and 2] are intended to be codified as an integral part of Title 33, chapter 17, and the provisions of Title 33, chapter 17, apply to [sections 1 and 2].

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

(3) [Section 4] is intended to be codified as an integral part of Title 33, chapter 26, and the provisions of Title 33, chapter 26, apply to [section 4].

(4) [Section 5] is intended to be codified as an integral part of Title 33, chapter 17, part 4, and the provisions of Title 33, chapter 17, part 4, apply to [section 5].

**Section 27. Effective date — applicability.** (1) Except as provided in subsection (2), [this act] is effective July 1, 2003, and applies to licenses issued or renewed on or after July 1, 2003.

(2) [Section 2] applies to license applications postmarked on or after July 1, 2004.

Approved April 21, 2003

## CHAPTER NO. 428

[HB 185]

AN ACT GENERALLY REVISING LAWS GOVERNING COMMERCIAL DRIVER LICENSING TO CONFORM WITH REQUIREMENTS OF THE FEDERAL MOTOR CARRIER SAFETY IMPROVEMENT ACT OF 1999 (MCSIA) AND THE FEDERAL REGULATIONS IMPLEMENTING MCSIA; DEFINING "NONCOMMERCIAL MOTOR VEHICLE"; REVISING THE DEFINITIONS OF "COMMERCIAL MOTOR VEHICLE" AND "COMMERCIAL DRIVER'S LICENSE"; CLARIFYING THE REQUIREMENTS FOR OPERATION OF A COMMERCIAL MOTOR VEHICLE; REVISING THE REQUIREMENTS GOVERNING THE APPLICATION FOR AND RENEWAL OF A COMMERCIAL DRIVER'S LICENSE; REVISING REQUIREMENTS FOR REQUESTING DRIVING RECORDS FROM A PRIOR STATE OF LICENSURE; REVISING LICENSE SUSPENSION PERIODS AND COMPUTATION REQUIREMENTS FOR NONCOMMERCIAL AND COMMERCIAL MOTOR VEHICLE IMPLIED CONSENT LAWS; REVISING REQUIREMENTS FOR SUSPENSION OF A COMMERCIAL DRIVER'S LICENSE FOR MAJOR OFFENSES OR FOR CONDUCT OCCURRING WHILE OPERATING A NONCOMMERCIAL MOTOR VEHICLE; CLARIFYING THE REQUIREMENTS FOR SUSPENSION OF A COMMERCIAL DRIVER'S LICENSE FOR A PERSON WHO OPERATES A COMMERCIAL MOTOR VEHICLE WITHOUT A COMMERCIAL DRIVER'S LICENSE OR PROPER ENDORSEMENT OR WHILE THE PERSON'S COMMERCIAL DRIVER'S LICENSE IS SUSPENDED; INCLUDING NONCOMMERCIAL MOTOR VEHICLE OFFENSES IN THE LIST OF FELONY-DRUG OFFENSES FOR WHICH SUSPENSION OF A COMMERCIAL DRIVER'S LICENSE IS REQUIRED; AMENDING SECTIONS 61-1-134, 61-1-135, 61-5-102, 61-5-107, 61-5-110, 61-5-111, 61-5-112, 61-5-118, 61-5-212, 61-8-402, 61-8-802, 61-8-803, 61-8-804, 61-8-805, 61-8-806, AND 61-11-102, MCA; REPEALING SECTION 61-5-117, MCA; AND PROVIDING APPLICABILITY DATES.

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

**Section 1. Noncommercial motor vehicle defined.** “Noncommercial motor vehicle” means any motor vehicle or combination of motor vehicles that is not included in the definition of commercial motor vehicle in 61-1-134 and includes but is not limited to the vehicles listed in 61-1-134(2).

**Section 2. Suspension of commercial driver’s license — railroad crossing offenses.** (1) The department shall suspend a person’s commercial driver’s license upon the report of a conviction of any of the following railroad crossing offenses or conduct:

- (a) for drivers who are not required to always stop:
  - (i) failing to slow down and check that the tracks are clear of an approaching train; or
  - (ii) failing to stop before reaching the crossing if the tracks are not clear;
- (b) for drivers who are always required to stop, failing to stop before driving onto the crossing;
- (c) for all drivers:
  - (i) failing to have sufficient space to drive completely through the crossing without stopping;
  - (ii) failing to obey a traffic control device or the directions of an enforcement official at the crossing; or
  - (iii) failing to negotiate a crossing because of insufficient undercarriage clearance.

(2) Upon receipt of a report of a conviction of any railroad crossing offense or conduct described in subsection (1), the following suspension periods must be imposed:

- (a) 60 days upon a first conviction;
- (b) 120 days upon a second conviction within a 3-year period; or
- (c) 1 year upon a third or subsequent conviction within a 3-year period.

**Section 3. Probationary drivers’s license ineligibility.** A person whose commercial driver’s license or commercial motor vehicle operating privilege is suspended under this part:

- (1) is not eligible for a restricted probationary driver’s license that would permit operation of a commercial motor vehicle during the period of suspension; and
- (2) may not operate a commercial motor vehicle until the period of suspension is completed and the person is otherwise eligible, under state and federal law, to have the commercial driver’s license restored or to reapply for a commercial driver’s license.

**Section 4.** Section 61-1-134, MCA, is amended to read:

**“61-1-134. Commercial motor vehicle defined — exceptions.** (1) Except as provided in subsection (2), “commercial motor vehicle” means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle:

- (a) has a gross combination weight rating or a gross combination weight of 26,001 pounds or more, whichever is greater, inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;



(b) has a gross vehicle weight rating or a gross vehicle weight of 26,001 pounds or more, whichever is greater;

(c) is designed to transport at least 16 passengers, including the driver;

(d) is a school bus as defined in 20-10-101; or

(e) is of any size and is used to transport any quantity or form of hazardous material required to be placarded pursuant to Title 49, Code of Federal Regulations.

(2) The following vehicles are not commercial motor vehicles:

(a) ~~a vehicle exempt from taxation, used for firefighting, and bearing Montana tax-exempt plates;~~

~~(b) a police emergency response vehicle~~ *an authorized emergency service vehicle:*

*(i) equipped with audible and visual signals as required under 61-9-401 and 61-9-402; and*

*(ii) entitled to the exemptions granted under 61-8-107; or*

~~(c)~~ *(b) a vehicle:*

*(i) controlled and operated by a farmer, family member of the farmer, or person employed by a the farmer;*

*(ii) used to transport farm products, farm machinery, or farm supplies within Montana or within 150 miles of the farm headquarters or, if there is a reciprocity agreement with a state adjoining Montana, within 150 miles of the farm, including any area within that perimeter that is in the adjoining state; and*

*(iii) not used to transport goods for compensation or hire.*

(3) For purposes of this section:

(a) "farmer" means a person who operates a farm or who is directly involved in the cultivation of land or crops or the raising of livestock owned by or under the direct control of that person;

(b) "gross combination weight rating" means the value specified by the manufacturer as the loaded weight of a combination or articulated vehicle; and

(c) "gross vehicle weight rating" means the value specified by the manufacturer as the loaded weight of a single vehicle."

**Section 5.** Section 61-1-135, MCA, is amended to read:

**"61-1-135. Commercial driver's license.** "Commercial driver's license" means:

*(1) a Montana driver's license issued under or granted by the laws of this state that authorizes the licensee a person to operate a class of commercial motor vehicle; and*

*(2) the privilege of a person to drive a commercial motor vehicle, whether or not the person holds a valid commercial driver's license."*

**Section 6.** Section 61-5-102, MCA, is amended to read:

**"61-5-102. Drivers to be licensed.** (1) 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.

(2) (a) A license is not valid for the operation of a motorcycle or quadricycle 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". A motorcycle endorsement is required for the operation of a quadricycle.

(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, ~~and~~ 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) 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 7.** Section 61-5-107, MCA, is amended to read:

**"61-5-107. Application for license, instruction permit, or motorcycle endorsement.** (1) Each application for an instruction permit, driver's license, *commercial driver's license*, or motorcycle endorsement must be made upon a form furnished by the department. Each application must be accompanied by the proper fee, and payment of the fee entitles the applicant to not more than three attempts to pass the examination within a period of 6 months from the date of application. A voter registration form for mail registration as prescribed by the secretary of state must be attached to each driver's license application. If the applicant wishes to register to vote, the department shall accept the registration and forward the form to the election administrator.

(2) Each application must include the full legal name, date of birth, sex, residence address of the applicant [and the applicant's social security number], must include a brief description of the applicant, and ~~must include a statement that allows the department to determine if~~ *provide the following additional information:*

(a) ~~the name of each jurisdiction in which the applicant has previously been licensed as a driver or commercial vehicle operator, and, if so, when and by what state or country to drive any type of motor vehicle during the 10-year period immediately preceding the date of the application;~~

(b) ~~any commercial driver's license has ever been suspended or revoked a certification from the applicant that the applicant is not currently subject to a suspension, revocation, disqualification, or withdrawal of a previously issued driver's license or any driving privileges in another jurisdiction and that the applicant does not have a driver's license from another jurisdiction;~~

(c) ~~an application has ever been denied and, if so, the date of and reason for suspension, revocation, or denial;~~

(d) ~~(c) the applicant has a~~ *a brief description of any physical or mental disability, limitation, or condition that impairs or may impair the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway; and*

(e) ~~(d) the applicant relies upon, or intends to rely upon,~~ *a brief description of any adaptive equipment or operational restrictions that the applicant relies*

*upon or intends to rely upon* to attain the ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway, including the nature of the equipment or restrictions.

(3) The department shall keep the applicant's social security number from this source confidential, except that the number may be used for purposes of subtitle VI of Title 49 of the U.S.C. or as otherwise permitted by state law administered by the department and may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]

(4) When an application is received from an applicant previously licensed by another jurisdiction, the department shall request a copy of the applicant's driving record from ~~the previous licensing jurisdiction~~ *each jurisdiction in which the applicant was licensed in the preceding 10-year period*. The driving record may be transmitted manually or by electronic medium. When received, the driving records ~~become a part of~~ *must be appended to* the driver's record *created and maintained* in this state ~~with the same force and effect as though entered on the driver's record in this state in the original instance~~. (Bracketed language terminates on occurrence of contingency—sec. 1, Ch. 27, L. 1999.)”

**Section 8.** Section 61-5-110, MCA, is amended to read:

**“61-5-110. Records check of applicants — examination of applicants — cooperative driver testing programs.** (1) Prior to examining an applicant for a driver's license, the department shall conduct a check of the applicant's driving record by querying the national driver register, established under 49 U.S.C. 30302, ~~or~~ *and* the commercial driver's license information system, established under 49 U.S.C. 31309.

(2) The department shall examine each applicant for a driver's license or motorcycle endorsement, except as otherwise provided in this section. The examination must include a test of the applicant's eyesight, a knowledge test examining the applicant's ability to read and understand highway signs and the applicant's knowledge of the traffic laws of this state, and, except as provided in 61-5-118, a road test or a skills test demonstrating the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle, quadricycle, or motorcycle. The knowledge test or road test, or both, may be waived by the department upon certification of the applicant's successful completion of the test by a certified cooperative driver testing program, as provided in subsection (3).

(3) The department is authorized to certify as a cooperative driver testing program any state-approved high school traffic education course offered by or in cooperation with a school district that employs an approved instructor who has current endorsement from the superintendent of public instruction as a teacher of traffic education or any motorcycle safety training course approved by the board of regents and that employs an approved instructor of motorcycle safety training and who agrees to:

(a) administer standardized knowledge and road tests required by the department to students participating in the district's high school traffic education courses or motorcycle safety training courses approved by the board of regents;

(b) certify the test results to the department; and

(c) comply with regulations of the department, the superintendent of public instruction, and the board of regents.

(4) (a) Except as otherwise provided by law, a resident who has a valid driver's license issued by another jurisdiction may surrender that license for a Montana license of the same class, type, and endorsement upon payment of the required fees and successful completion of a vision examination. In addition, a resident surrendering a commercial driver's license issued by another jurisdiction shall successfully complete any examination required by federal regulations before being issued a commercial driver's license by the department.

(b) The department may require an applicant who surrenders a valid driver's license issued by another jurisdiction to submit to a knowledge and skills test if:

(i) the applicant has a physical or mental disability, limitation, or condition that impairs, or may impair, the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway; and

(ii) the surrendered license does not include readily discernible adaptive equipment or operational restrictions appropriate to the applicant's functional abilities; or

(iii) the applicant wants to remove or modify a restriction imposed on the surrendered license.

(c) When a license from another jurisdiction is surrendered, the department shall notify the issuing agency from the other jurisdiction that the applicant has surrendered the license. If the applicant wants to retain the license from another jurisdiction for identification or other nondriving purposes, the department shall place a distinctive mark on the license, indicating that the license may be used for nondriving purposes only, and return the marked license to the applicant."

**Section 9.** Section 61-5-111, MCA, is amended to read:

**"61-5-111. Contents of a driver's license, renewal, renewal by mail, license expirations, grace period, and fees for licenses, permits, and endorsements — notice of expiration.** (1) The department may appoint county treasurers and other qualified officers to act as its agents for the sale of driver's licenses receipts and shall make necessary rules governing sales. In areas in which the department provides driver licensing services 3 days or more a week, the department is responsible for sale of receipts and may, in its discretion, appoint an agent to sell receipts.

(2) The department, upon receipt of payment of the fees specified in this section, shall issue a driver's license to each qualifying applicant. The license must contain a full-face photograph of the licensee in the size and form prescribed by the department; a distinguishing number issued to the licensee; the full legal name, date of birth, Montana mailing address, and a brief description of the licensee; and either the licensee's customary signature or a digital reproduction of the licensee's customary signature. The department may not use the licensee's social security number as the distinguishing number unless the licensee expressly authorizes the use. A license is not valid until it is signed by the licensee.

(3) (a) When a person applies for renewal of a driver's license, the department shall conduct a records check in accordance with 61-5-110(1) to determine the applicant's eligibility status and shall test the applicant's eyesight. The department may also require the applicant to submit to a knowledge and skills test if:

(i) the renewal applicant has a physical or mental disability, limitation, or condition that impairs, or may impair, the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway; and

(ii) the expired or expiring license does not include adaptive equipment or operational restrictions appropriate to the applicant's functional abilities; or

(iii) the applicant wants to remove or modify the restrictions stated on the expired or expiring license.

(b) In the case of a commercial driver's license, the department *shall, if the information was not provided in a prior licensing cycle, require the renewal applicant to provide the name of each jurisdiction in which the applicant was previously licensed to drive any type of motor vehicle during the 10-year period immediately preceding the date of the renewal application* and may also require that the applicant successfully complete a written examination as required by federal regulations.

(c) A person is considered to have applied for renewal of a Montana driver's license if the application is made within 6 months before or 3 months after the expiration of the person's license. Except as provided in subsection (3)(d), a person seeking to renew a driver's license shall appear in person at a Montana driver's examination station.

(d) (i) A person may renew a driver's license by mail if the person certifies that the person is temporarily out of state and will not be returning to the state prior to the expiration of the license.

(ii) An applicant who renews a driver's license by mail shall submit to the department an approved vision examination and a medical evaluation from a licensed physician in addition to the fees required for renewal.

(iii) If the department does not have a digitized photograph or signature record of the renewal applicant from the expiring license, then the department may require the renewal applicant to submit a personal photograph and signature that meets the requirements prescribed by the department.

(iv) The term of a license renewed by mail is 4 years, and a person may not renew by mail for consecutive license terms.

(v) The department may not renew a license by mail if the records check conducted in accordance with 61-5-110(1) shows an ineligible license status for the applicant.

(e) The department shall mail a driver's license renewal notice no earlier than 60 days and no later than 30 days prior to the expiration date of a commercial driver's license if the licensee has previously submitted a written request for the notice, either at the time of initial application or of renewal of the license.

(4) (a) Except as provided in subsections (4)(b) and (4)(c), a license expires on the anniversary of the licensee's birthday 8 years or less after the date of issue or on the licensee's 75th birthday, whichever occurs first.

(b) A license issued to a person who is 75 years of age or older expires on the anniversary of the licensee's birthday 4 years or less after the date of issue.

(c) A license issued to a person who is under 21 years of age expires on the licensee's 21st birthday.

(5) Whenever the department issues an original license to a person under the age of 18 years, the license must be designated and clearly marked as a "provisional license". Any license designated and marked as provisional may be suspended by the department for a period of not more than 12 months when its records disclose that the licensee, subsequent to the issuance of the license, has been guilty of careless or negligent driving.

(6) Fees for driver's licenses are:

(a) driver's license, except a commercial driver's license — \$4 a year or fraction of a year;

(b) motorcycle endorsement — 50 cents a year or fraction of a year;

(c) commercial driver's license:

(i) interstate — \$5 a year or fraction of a year;

(ii) intrastate — \$3.50 a year or fraction of a year.

(7) Upon receipt of notice from another jurisdiction that a person licensed under this chapter has surrendered a Montana driver's license to that jurisdiction, the department shall change the license status on the person's official driver record to "inactive". If the person returns to Montana prior to the expiration of the previously surrendered license, the department may reactivate the license for the remainder of the license term."

**Section 10.** 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:

~~(1)~~(a) subject to the exceptions provided in this section, comport with the requirements of 49 CFR, part 383, and the medical qualifications of 49 CFR, part 391;

~~(2)~~(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;

~~(3)~~(c) allow for the issuance of a type 2 commercial driver's license to a person who is 18 years of age or older or an operationally restricted type 2 commercial driver's license to a person who is 16 years of age or older;

~~(4)~~(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 skills test for a qualified person employed in farm-related service industries who has a good driving record and sufficient prior driving experience;

~~(5)~~(e) prescribe the operational and seasonal restrictions for a seasonal commercial driver's license; ~~and~~

~~(6)~~(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.*

(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 as provided in 61-1-134(2).*"

**Section 11.** Section 61-5-118, MCA, is amended to read:

**"61-5-118. Third-party commercial driver testing program — 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 ~~61-5-117~~ 61-5-112.

(2) 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) a third-party commercial driver testing program certified under subsection (1); or

(b) 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."

**Section 12.** Section 61-5-212, MCA, is amended to read:

**"61-5-212. Driving while license suspended or revoked — penalty — seizure of vehicle or rendering vehicle inoperable.** (1) (a) A person ~~who~~ commits the offense of driving a motor vehicle during a suspension or revocation period if the person drives:

(i) a motor vehicle ~~or commercial motor vehicle~~ on any public highway of this state at a time when the person's privilege to do so is suspended or revoked in this state or any other state; or

(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 under federal regulations.

(b) A person convicted of the offense of driving a motor vehicle during a suspension or revocation period ~~is guilty of a misdemeanor and upon conviction~~

shall be punished by imprisonment for not less than 2 days or more than 6 months and may be fined not more than \$500.

(2) (a) The department 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 or *privilege to drive* was suspended or revoked shall extend the period of suspension or revocation for an additional like 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 or revoked for violating the provisions of 61-8-401, 61-8-402, 61-8-406, 61-8-409, or 61-8-410 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 13.** Section 61-8-402, MCA, is amended to read:

**"61-8-402. Blood or breath tests for alcohol, drugs, or both.** (1) A person who operates or is in actual physical control of a vehicle upon ways of this state open to the public is considered to have given consent to a test or tests of the person's blood or breath for the purpose of determining any measured amount or detected presence of alcohol or drugs in the person's body.

(2) (a) The test or tests must be administered at the direction of a peace officer when:

(i) the officer has reasonable grounds to believe that the person has been driving or has been in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs, or a combination of the two and the person has been placed under arrest for a violation of 61-8-401;

(ii) the person is under the age of 21 and has been placed under arrest for a violation of 61-8-410; or

(iii) the officer has probable cause to believe that the person was driving or in actual physical control of a vehicle in violation of 61-8-401 and the person has been involved in a motor vehicle accident or collision resulting in property damage, bodily injury, or death.



(b) The arresting or investigating officer may designate which test or tests are administered.

(3) A person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal is considered not to have withdrawn the consent provided by subsection (1).

(4) If an arrested person refuses to submit to one or more tests requested and designated by the officer as provided in subsection (2), the refused test or tests may not be given, but the officer shall, on behalf of the department, immediately seize the person's driver's license. The peace officer shall immediately forward the license to the department, along with a report certified under penalty of law stating which of the conditions set forth in subsection (2)(a) provides the basis for the testing request and confirming that the person refused to submit to one or more tests requested and designated by the peace officer. Upon receipt of the report, the department shall suspend the license for the period provided in subsection (6).

(5) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a temporary driving permit, which is effective 12 hours after issuance and is valid for 5 days following the date of issuance, and shall provide the driver with written notice of the license suspension or revocation and the right to a hearing provided in 61-8-403.

(6) ~~(a)~~ *Except as provided in subsection (6)(b), the following suspension and revocation periods are applicable upon refusal to submit to one or more tests:*

~~(a)(i)~~ *upon a first refusal, a suspension of 6 months with no provision for a restricted probationary license;*

~~(a)(ii)~~ *upon a second or subsequent refusal within 5 years of a previous refusal, as determined from the records of the department, a revocation of 1 year with no provision for a restricted probationary license.*

*(b) If a person who refuses to submit to one or more tests under this section is the holder of a commercial driver's license, in addition to any action taken against the driver's noncommercial driving privileges, the department shall:*

*(i) upon a first refusal, suspend the person's commercial driver's license for a one-year period; and*

*(ii) upon a second or subsequent refusal, suspend the person's commercial driver's license for life, subject to department rules adopted to implement federal rules allowing for license reinstatement, if the person is otherwise eligible, upon completion of a minimum suspension period of 10 years. If the person has a prior conviction of a major offense listed in 61-8-802(2) arising from a separate incident, the conviction has the same effect as a previous testing refusal for purposes of this subsection (6)(b).*

(7) A nonresident driver's license seized under this section must be sent by the department to the licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or more tests.

(8) The department may recognize the seizure of a license of a tribal member by a peace officer acting under the authority of a tribal government or an order issued by a tribal court suspending, revoking, or reinstating a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law or regulation requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the actions occurred within the exterior boundaries of

a federally recognized Indian reservation in this state. Action by the department under this subsection is not reviewable under 61-8-403.

(9) A suspension under this section is subject to review as provided in this part.

(10) This section does not apply to blood and breath tests, samples, and analyses used for purposes of medical treatment or care of an injured motorist or related to a lawful seizure for a suspected violation of an offense not in this part."

**Section 14.** Section 61-8-802, MCA, is amended to read:

**"61-8-802. Suspension of commercial driver's license — disqualification.** (1) ~~Except as provided in subsection (3), if the department receives notice from a court or from another licensing jurisdiction that a person holding a commercial driver's license has been convicted of any offense or conduct requiring driver disqualification under 49 U.S.C. 31310 or 49 CFR 383.51~~ Upon receipt of a report of a major offense committed by a person who holds a commercial driver's license or a person required to have a commercial driver's license, the department shall suspend the person's commercial driver's license:

(a) upon ~~notice receipt of a report of a first conviction~~ *notice receipt of a report of a first conviction major offense*, for 1 year, except that if the *major offense* occurred while operating a commercial motor vehicle transporting placardable hazardous material, the suspension must be for 3 years; or

(b) upon ~~notice receipt of a report of a second conviction of the same offense or conduct or subsequent major offense arising from an incident that is separate from the prior major offense~~, for life, subject to department rules adopted to implement federal rules allowing for license reinstatement, if the person is otherwise eligible, upon completion of a minimum suspension period of 10 years.

(2) ~~The department is required by federal law to suspend a person's commercial driver's license upon the report of~~ *For purposes of this section, the term "major offense" refers to a refusal to take a test under an implied consent law or a conviction of or forfeiture of bail not vacated for any of the following offenses or conduct:*

(a) ~~operating a commercial driving or being in actual physical control of a motor vehicle while under the influence of alcohol, or a controlled substance a drug, or a combination of the two;~~

(b) *driving or being in actual physical control of:*

(i) *a noncommercial motor vehicle and having an alcohol concentration of 0.10 or more; or*

(ii) *a commercial motor vehicle and having an alcohol concentration of 0.04 or more;*

(b)(c) ~~leaving the scene of an accident involving a commercial motor vehicle operated by the person death or personal injury or failing to give information and render aid;~~

(c)(d) ~~using a commercial motor vehicle in the commission of a felony, other than a felony under 61-8-804;~~

(d)(e) ~~operating a commercial motor vehicle while the person's commercial driver's license is revoked, suspended, or canceled or the person is disqualified from operating a commercial motor vehicle; or~~

~~(e)(f) causing a fatality through negligent or criminal operation of a commercial motor vehicle; or~~

~~(f) committing one of the following railroad grade crossing violations:~~

~~(i) for drivers who are not required to always stop:~~

~~(A) failing to slow down and check that the tracks are clear of an approaching train; or~~

~~(B) failing to stop before reaching the crossing if the tracks are not clear;~~

~~(ii) for drivers who are always required to stop, failing to stop before driving onto the crossing;~~

~~(iii) for all drivers:~~

~~(A) failing to have sufficient space to drive completely through the crossing without stopping;~~

~~(B) failing to obey a traffic control device or the directions of an enforcement official at the crossing; or~~

~~(C) failing to negotiate a crossing because of insufficient undercarriage clearance.~~

~~(3) The department shall suspend the commercial driver's license of a person who is convicted of a railroad grade crossing violation for:~~

~~(a) 60 days upon a first conviction;~~

~~(b) 120 days upon a second conviction within a 3 year period; or~~

~~(c) 1 year upon a third or subsequent conviction within a 3 year period.~~

~~(4) A person whose commercial driver's license is suspended under this section:~~

~~(a) is not eligible for a restricted probationary driver's license; and~~

~~(b) may not operate a commercial motor vehicle until the suspension is lifted and the person's commercial driver's license is restored."~~

**Section 15.** Section 61-8-803, MCA, is amended to read:

**"61-8-803. Suspension of commercial driver's license — serious traffic violations.** (1) If the department receives notice from a court or another licensing jurisdiction that a person holding *or required to hold* a commercial driver's license has been convicted of more than one serious traffic violation in separate incidents within a 3-year period, the department shall suspend the person's commercial driver's license:

(a) for 60 days upon receipt of notice of the second conviction; or

(b) for 120 days upon receipt of notice of the third or subsequent conviction.

(2) For purposes of this section, "serious traffic violation" means conviction, when operating a commercial motor vehicle, of:

(a) speeding in excess of 15 miles an hour above a posted speed limit;

(b) reckless driving;

(c) improper or erratic traffic lane changes;

(d) following too closely;

(e) a violation of a state law or local ordinance relating to the operation of a motor vehicle, excluding a parking, weight, or equipment violation, that arises in connection with a fatal accident;

(f) operating a commercial motor vehicle without a commercial driver's license;

(g) operating a commercial motor vehicle without a commercial driver's license in one's possession or refusing to display a commercial driver's license upon request; or

(h) operating a commercial motor vehicle ~~when the minimum testing standards for the class of vehicle operated or the type of cargo carried have not been satisfied by the individual~~ *without the proper class of commercial driver's license or endorsements, or both, for the specific vehicle type or types being operated or for the passengers or type or types of cargo being transported.*"

**Section 16.** Section 61-8-804, MCA, is amended to read:

**"61-8-804. Suspension of commercial driver's license — felony involving a controlled substance while driving a commercial vehicle.** If the department receives information that a ~~commercial motor vehicle operator person who holds or is required to hold a commercial driver's license~~ has been convicted of using a commercial *or noncommercial* motor vehicle in the commission of a felony involving the manufacture, distribution, or dispensing of a controlled substance, as defined by federal regulations, or a felony involving possession with intent to manufacture, distribute, or dispense a controlled substance, the department shall suspend the ~~operator's~~ *person's* commercial driver's license for life *and may not reinstate the license at any time for any reason.*"

**Section 17.** Section 61-8-805, MCA, is amended to read:

**"61-8-805. Suspension for operating commercial vehicle with alcohol concentration of 0.04 or more — hearing.** (1) A person whose alcohol concentration is 0.04 or more while the person drives or is in actual physical control of a commercial motor vehicle is subject to the suspension of the person's commercial driver's license. The peace officer who determines that the person is operating a commercial motor vehicle with an alcohol concentration of 0.04 or more shall immediately seize the person's commercial driver's license and, on behalf of the department, give the person written notice of the license suspension and the right to a hearing under 61-8-808. Upon receipt of a report certified under penalty of law from the peace officer that the person was operating a commercial motor vehicle with an alcohol concentration of 0.04 or more, the department shall suspend the license, with no provision for a restricted probationary commercial license, for:

(a) 1 year, upon receipt of the first report of a 0.04 or more alcohol concentration violation, except that if the violation occurred in a commercial motor vehicle transporting placardable hazardous materials, the suspension must be for 3 years; and

(b) life, upon receipt of a second or subsequent 0.04 or more alcohol concentration violation report at any time as determined from the records of the department, subject to federal rules allowing for driver rehabilitation and license reinstatement, if otherwise eligible, upon service of a minimum period of 10 years' suspension.

(2) A peace officer who determines that a commercial motor vehicle operator has a measured amount or detected presence of alcohol in the operator's body while operating a commercial motor vehicle shall place the commercial motor vehicle operator out of service as mandated by federal regulations for 24 hours.

(3) The fact that a person charged with a violation of the provisions of subsection (1) is entitled to use alcohol under the laws of Montana is not a defense against a charge of violating the provisions of subsection (1).

(4) For purposes of this section, a conviction for violation of 61-8-401 or 61-8-406 while operating a commercial motor vehicle *or a prior refusal to be tested under an implied consent law* must be treated as a prior report of a 0.04 or more alcohol concentration violation and must be used in determining the length of the license suspension under subsection (1)."

**Section 18.** Section 61-8-806, MCA, is amended to read:

**"61-8-806. Blood and breath tests of commercial vehicle operators — procedure — suspension.** (1) A person who operates a commercial motor vehicle upon the ways of this state open to the public is considered to have given consent to one or more tests of the person's blood or breath for the purpose of determining a measured amount or detected presence of alcohol in the person's body if the person is requested to submit to the test or tests by a peace officer who has reasonable grounds to believe that the person was driving or in actual physical control of a commercial motor vehicle upon the ways of this state open to the public while having a measured alcohol concentration or detected presence of alcohol. The peace officer may designate the blood or breath test or tests to be administered and may request that the person submit to a preliminary alcohol screening test before a blood, breath, or urine test is taken.

(2) A person who is unconscious or who is otherwise incapable of refusal is considered not to have withdrawn the consent provided in subsection (1).

(3) If a person refuses to submit to one or more tests designated by the officer, the test or tests may not be given, but the officer shall immediately seize the person's commercial driver's license and forward the license to the department, along with a report certified under penalty of law that the officer had reasonable grounds to believe that the person was driving or was in actual physical control of a commercial motor vehicle upon ways of this state open to the public while having a measurable alcohol concentration or detected presence of alcohol and that the person had refused to submit to one or more tests upon the request of the officer. Upon receipt of the report, the department shall suspend the license for a period provided in subsection (5).

(4) Upon seizure of a person's commercial driver's license, the peace officer shall issue, on behalf of the department, a temporary 5-day noncommercial driving permit, effective 12 hours after the time of issuance, and shall provide the person with written notice of the license suspension and the right to a hearing under 61-8-808.

(5) Upon receipt of the officer's certified report, the department shall suspend the person's commercial driver's license, with no provision for a restricted probationary commercial driver's license, for:

(a) 1 year, upon a first refusal, except that if the violation occurred in a commercial motor vehicle transporting placardable hazardous materials, the suspension for a first refusal must be for 3 years;

(b) life, upon a second or subsequent refusal at any time as determined from the records of the department, subject to *department rules adopted to implement federal rules allowing for driver rehabilitation and license reinstatement*, if otherwise eligible, upon service of a minimum period of 10 years' suspension. *If the person has a prior conviction of a major offense listed in 61-8-802(2) arising*

from a separate incident, the conviction has the same effect as a previous testing refusal for purposes of this subsection (5)(b).”

**Section 19.** Section 61-11-102, MCA, is amended to read:

**“61-11-102. Records to be kept by the department.** (1) The department shall file every application for a driver’s license received by it and shall maintain suitable indexes containing, in alphabetical order:

(a) all applications denied and on each ~~thereof note~~ the reasons for ~~such~~ denial;

(b) all applications granted; and

(c) the name of ~~every~~ *each* licensee whose license has been suspended or revoked by the department and after each ~~such~~ name ~~note~~ the reasons for ~~such~~ the action.

(2) (a) The department shall also file all accident reports and abstracts of court records of convictions received by it under the laws of this state. ~~and in connection therewith~~ *The department shall maintain convenient records or make suitable notations in order a manner that allows* an individual record of each licensee, showing the convictions of ~~such~~ the licensee and certain traffic accidents in which ~~he~~ *the licensee* has been involved. ~~shall~~ *The records must be* readily ascertainable and available for the consideration of the department upon any application for renewal of a license and at other suitable times. ~~No~~ A record of involvement in a traffic accident may *not* be entered on a licensee’s record unless ~~he~~ *the licensee* was convicted, as defined in 61-11-203, for an act causally related to the accident.

(b) *If the department receives notice that a licensee has been disqualified by the federal motor carrier safety administration as an imminent hazard under 49 CFR 383.52, the department shall record the disqualification on the licensee’s record.*

(3) The department is further authorized, upon receiving a record of the conviction in this state of a nonresident driver of a motor vehicle of any offense under the motor vehicle laws of this state, to forward a certified copy of ~~such~~ the record to the motor vehicle administrator in the state ~~wherein~~ *in which* the person ~~so convicted~~ is a resident.

(4) The department may photograph, microphotograph, photostat, or reproduce on film any of its records. The film or reproducing material must be durable, and the device used to reproduce the records on the film or material must accurately reproduce and perpetuate the original records. ~~Such a~~ A photograph, microphotograph, photostatic copy, or photographic film of the original record is an original record for all purposes and is admissible in evidence in all courts or administrative agencies. A facsimile, exemplification, or certified copy of the original record is a transcript of the original for purposes stated in this section.

(5) The department may place on a computer storage device the information contained on original records or reproductions of original records made pursuant to this section. Signatures on records ~~need~~ *are not required to be* placed on a computer storage device.

(6) A reproduction of the information placed on a computer storage device is an original of the record for all purposes and is admissible in evidence without further foundation in all courts or administrative agencies when the following certification by a custodian of the record appears on each page:

The individual named below, being a duly designated custodian of the driver records of the department of justice, motor vehicle division, certifies this document as a true reproduction, in accordance with 61-11-102(6), of the information contained in a computer storage device of the department of justice, motor vehicle division.

Signed: .....  
 (Print Full Name)"

**Section 20. Repealer.** Section 61-5-117, MCA, is repealed.

**Section 21. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 61, chapter 1, part 1, and the provisions of Title 61 apply to [section 1].

(2) [Sections 2 and 3] are intended to be codified as an integral part of Title 61, chapter 8, part 8, and the provisions of Title 61 apply to [sections 2 and 3].

**Section 22. Coordination instruction.** If Senate Bill No. 13 and [this act] are both passed and approved, then the number 0.10 in [section 14(2)(b)(i)], amending 61-8-802, must be replaced by the number 0.08.

**Section 23. Applicability.** (1) [Sections 4 through 6] apply to the operation of a commercial motor vehicle on or after October 1, 2003.

(2) [Sections 1 and 7 through 11] apply to a driver's license issued or renewed on or after October 1, 2003.

(3) [Sections 2, 3, and 12 through 19] apply to conduct or offenses that occur on or after October 1, 2003.

Approved April 22, 2003

## CHAPTER NO. 429

[HB 213]

AN ACT GENERALLY REVISING RETIREMENT LAWS; GENERALLY REVISING THE PUBLIC EMPLOYEES', JUDGES', HIGHWAY PATROL OFFICERS', SHERIFFS', GAME WARDEN AND PEACE OFFICERS', MUNICIPAL POLICE OFFICERS', AND FIREFIGHTERS' UNIFIED RETIREMENT SYSTEMS; GENERALLY REVISING THE VOLUNTEER FIREFIGHTERS' COMPENSATION ACT; CLARIFYING TERMINOLOGY RELATED TO SERVICE CREDIT; CLARIFYING PROVISIONS REGARDING THE PURCHASE OF SERVICE CREDIT; REVISING THE PURCHASE OF SERVICE CREDIT FOR RESERVE MILITARY SERVICE; CLARIFYING DEFINITIONS WITH RESPECT TO COMPENSATION, HIGHEST AVERAGE COMPENSATION, AND FINAL AVERAGE COMPENSATION; REVISING DISABILITY PROVISIONS; CLARIFYING SURVIVORSHIP PAYMENT PROVISIONS; REVISING PROVISIONS RELATED TO COURT SETTLEMENTS CONCERNING PAYMENT OF RETIREMENT BENEFITS; REVISING DEFINITIONS IN THE DEFERRED RETIREMENT OPTION PLAN WITHIN THE MUNICIPAL POLICE OFFICERS' RETIREMENT SYSTEM; AMENDING SECTIONS 7-33-2313, 19-2-303, 19-2-403, 19-2-506, 19-2-603, 19-2-702, 19-2-704, 19-2-706, 19-2-708, 19-2-709, 19-2-801, 19-2-802, 19-2-907, 19-2-908, 19-2-909, 19-2-1010, 19-3-108, 19-3-401, 19-3-403, 19-3-412, 19-3-503, 19-3-504, 19-3-505, 19-3-510, 19-3-511, 19-3-512, 19-3-513, 19-3-514, 19-3-521, 19-3-904, 19-3-906, 19-3-908, 19-3-1002, 19-3-1008, 19-3-1015,

19-3-1106, 19-3-1201, 19-3-1202, 19-3-1205, 19-3-1210, 19-3-1501, 19-3-2103, 19-3-2111, 19-3-2112, 19-3-2113, 19-3-2114, 19-3-2115, 19-3-2116, 19-3-2117, 19-3-2126, 19-3-2133, 19-3-2141, 19-5-101, 19-5-301, 19-5-409, 19-5-501, 19-5-502, 19-5-701, 19-6-101, 19-6-401, 19-6-502, 19-6-503, 19-6-601, 19-6-709, 19-6-801, 19-6-803, 19-6-804, 19-6-805, 19-7-101, 19-7-301, 19-7-312, 19-7-502, 19-7-601, 19-7-801, 19-7-803, 19-7-804, 19-7-805, 19-7-1001, 19-8-101, 19-8-301, 19-8-302, 19-8-308, 19-8-604, 19-8-701, 19-8-801, 19-8-901, 19-8-904, 19-8-905, 19-8-906, 19-9-104, 19-9-301, 19-9-403, 19-9-405, 19-9-406, 19-9-410, 19-9-411, 19-9-903, 19-9-1202, 19-9-1204, 19-9-1205, 19-9-1206, 19-9-1207, 19-9-1208, 19-13-104, 19-13-301, 19-13-403, 19-13-405, 19-13-406, 19-13-701, 19-13-704, 19-13-803, 19-13-1007, 19-17-108, 19-17-402, 19-17-403, 19-17-405, 19-50-102, AND 25-13-608, MCA; REPEALING SECTIONS 19-3-509, 19-3-1604, 19-6-802, 19-7-802, 19-8-902, 19-9-405, AND 19-13-404, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1. Purchase of Montana public service.** (1) (a) A member may, at any time before retirement, file a written application with the board to purchase as service credit in the member's retirement system all or any portion of the member's previous service credit in the public employees', judges', highway patrol officers', sheriffs', game wardens' and peace officers', firefighters' unified, or municipal police officers' retirement system to the extent that the member either has received or is eligible to receive a refund of accumulated contributions. To purchase this service credit, the member shall pay the actuarial cost of the service credit in the member's current retirement system, based on the system's most recent actuarial valuation and the annual compensation of the member, minus the employer contribution provided in subsection (1)(b).

(b) Upon receiving the member's payment under subsection (1)(a), the board shall transfer from the member's former retirement system to the member's current retirement system an amount equal to the employer contributions made on compensation during the member's former service, but no more than an amount equal to the normal cost contribution rate minus the employee contribution rate in the member's current retirement system according to the system's most recent actuarial valuation.

(2) (a) An active member may, at any time before retirement, file a written application with the board to purchase all or a portion of service credit for full-time service performed for the state or a political subdivision of the state. The member shall provide salary and employment documentation certified by the member's former public employer. To purchase service credit under this section, the member shall pay the actuarial cost of the service credit in the member's current retirement system, as determined by the board, based on the system's most recent actuarial valuation.

(b) The board is the sole authority under subsection (2)(a) in determining what constitutes full-time public service, subject to 19-2-403.

**Section 2.** Section 7-33-2313, MCA, is amended to read:

**"7-33-2313. Powers and duties of chief — request for assistance — definitions.** (1) The chief of every fire department shall inquire into the cause of every fire occurring in the town in which the chief serves as the chief and ~~must~~ *shall* keep a record of every fire. The chief ~~must~~ *shall* aid in the enforcement of all fire ordinances, examine buildings in the process of erection, report



violations of ordinances relating to prevention or extinguishment of fires and, when directed by the proper authorities, institute prosecutions for the violation of those ordinances, and perform other duties as may be imposed upon the chief by proper authority. The chief's compensation, if any, must be fixed and paid by the city or town authorities. The chief ~~must~~ shall attend all fires, with the chief's badge of office conspicuously displayed. The chief shall prevent injury to, take charge of, and preserve all property rescued from fires and return it to the owner on the payment of the expenses incurred in saving and keeping it. The amount of the expenses, when not agreed to, must be fixed by a justice of the peace.

(2) The chief shall devise and formulate or cause to be devised and formulated a course or plan of instruction or training program making available to each regular member of the chief's department not less than 30 hours of instruction ~~per each year~~ in matters pertaining to firefighting, ~~and the~~ The chief shall supervise the operation of the *training plan or program and maintain training records for each current and former firefighter for the purposes of the public employees' retirement board provided for in 2-15-1009.*

(3) If the county commissioners, trustees of a fire district, or governing body of a fire service area have not concluded a mutual aid agreement to protect an unincorporated town or village against natural incidents, emergencies, or disasters or incidents, emergencies, or disasters caused by persons, the chief may request assistance pursuant to 10-3-209.

(4) As used in this section, "incidents", "disasters", or "emergencies" has the meaning ~~ascribed to the term~~ provided in 10-3-103."

**Section 3.** Section 19-2-303, MCA, is amended to read:

**"19-2-303. Definitions.** Unless the context requires otherwise, for each of the retirement systems subject to this chapter, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the regular and any additional contributions made by a member in a defined benefit plan, together with the regular interest on the contributions.

(2) "Active member" means a member who is a paid employee of an employer, is making the required contributions, and is properly reported to the board for the most current reporting period.

(3) "Actuarial cost" means the amount determined by the board in a uniform and nondiscriminatory manner to represent the present value of the benefits to be derived from the additional service to be credited based on the most recent actuarial valuation for the system and the age, years until retirement, and current salary of the member.

(4) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality table and interest rate assumptions adopted by the board.

(5) "Actuarial liabilities" means the excess of the present value of all benefits payable under a defined benefit retirement plan over the present value of future normal costs in that retirement plan.

(6) "Actuary" means the actuary retained by the board in accordance with 19-2-405.

(7) "Additional contributions" means contributions made by a member of a defined benefit plan to purchase various types of optional service credit as allowed by the applicable retirement plan.

(8) "Annuity" means:

(a) in the case of a defined benefit plan, equal and fixed payments for life that are the actuarial equivalent of a lump-sum payment under a retirement plan and as such are not benefits paid by a retirement plan and are not subject to periodic or one-time increases; or

(b) in the case of the defined contribution plan, a payment of a fixed sum of money at regular intervals.

(9) "Benefit" means:

(a) the service *retirement benefit*, *early retirement benefit*, or disability retirement or survivorship benefit payment provided by a defined benefit retirement plan; or

(b) a payment or distribution under the defined contribution retirement plan, including a disability payment under 19-3-2141, for the exclusive benefit of a plan member or the member's beneficiary or an annuity purchased under 19-3-2124.

(10) "Board" means the public employees' retirement board provided for in 2-15-1009.

(11) "Contingent annuitant" means a person designated to receive a continuing monthly benefit after the death of a retired member.

(12) "Covered employment" means employment in a covered position.

(13) "Covered position" means a position in which the employee must be a member of the retirement system except as otherwise provided by law.

~~(14) "Credited service" or "service credit" means the periods of time for which the required contributions have been made to a retirement plan and that are used to calculate service or disability retirement or survivorship benefits under a defined benefit retirement plan.~~

~~(15)~~ (14) "Defined benefit retirement plan" or "defined benefit plan" means a plan within the retirement systems provided for pursuant to 19-2-302 that is not the defined contribution retirement plan.

~~(16)~~ (15) "Defined contribution retirement plan" or "defined contribution plan" means the plan within the public employees' retirement system established in 19-3-103 that is provided for in chapter 3, part 21, of this title and that is not a defined benefit plan.

~~(17)~~ (16) "Department" means the department of administration.

~~(18)~~ (17) "Designated beneficiary" means the person designated by a member or payment recipient to receive any survivorship benefits, lump-sum payments, or benefit from a retirement account upon the death of the member or payment recipient, including annuities derived from the benefits or payments.

~~(19)~~ (18) "Disability" or "*disabled*" means a total inability of the member to perform the member's duties by reason of physical or mental incapacity. The disability must be incurred while the member is an active member and must be one of permanent duration or of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

(19) "*Early retirement benefit*" means the retirement benefit payable to a member following early retirement, and is the actuarial equivalent of the accrued portion of the member's service retirement benefit.

(20) "Employee" means a person who is employed by an employer in any capacity and whose salary is being paid by the employer or a person for whom an interlocal governmental entity is responsible for paying retirement contributions pursuant to 7-11-105.

(21) "Employer" means a governmental agency participating in a retirement system enumerated in 19-2-302 on behalf of its eligible employees. The term includes an interlocal governmental entity identified as responsible for paying retirement contributions pursuant to 7-11-105.

(22) "Essential elements of the position" means fundamental job duties. An element may be considered essential because of but not limited to the following factors:

- (a) the position exists to perform the element;
- (b) there are a limited number of employees to perform the element; or
- (c) the element is highly specialized.

(23) "Fiscal year" means a plan year, which is any year commencing with July 1 and ending the following June 30.

(24) "Inactive member" means a member who is not an active or retired member.

(25) "Internal Revenue Code" means the federal Internal Revenue Code of 1954 or 1986, as applicable to a retirement system, as that code provided on July 1, 1999.

(26) "Member" means either:

- (a) a person with accumulated contributions and service credited with a defined benefit retirement plan or receiving a retirement benefit on account of the person's previous service credited in a retirement system; or
- (b) a person with a retirement account in the defined contribution plan.

(27) "Membership service" means the periods of service that are used to determine eligibility for retirement or other benefits.

(28) (a) "Normal cost" or "future normal cost" means an amount calculated under an actuarial cost method required to fund accruing benefits for members of a defined benefit retirement plan during any year in the future.

(b) Normal cost does not include any portion of the supplemental costs of a retirement plan.

(29) "Normal retirement age" means the age at which a member is eligible to immediately receive a retirement benefit based on the member's age, length of service, or both, as specified under the member's retirement system, without disability and without an actuarial or similar reduction in the benefit.

(30) "Pension" means benefit payments for life derived from contributions to a retirement plan made from state- or employer-controlled funds.

(31) "Pension trust fund" means a fund established to hold the contributions, income, and assets of a retirement system or plan in public trust.

(32) "Plan choice rate" means the amount of the employer contribution as a percentage of payroll covered by the defined contribution plan members that is allocated to the public employees' retirement system's defined benefit plan pursuant to 19-3-2117 and that is adjusted by the board pursuant to 19-3-2121 to actuarially fund the unfunded liabilities and the normal cost rate changes in a

defined benefit plan resulting from member selection of the defined contribution plan.

(33) "Regular contributions" means contributions required from members under a retirement plan.

(34) "Regular interest" means interest at rates set from time to time by the board.

(35) "Retirement" or "retired" means the status of a member who has been terminated from service for at least 30 days and has received and accepted a retirement benefit from a retirement plan.

(36) "Retirement account" means an individual account within the defined contribution retirement plan for the deposit of employer and ~~employee~~ *member* contributions and other assets for the exclusive benefit of a member of the defined contribution plan or the member's beneficiary.

(37) "Retirement benefit" means:

(a) in the case of a defined benefit plan, the periodic benefit payable as a result of service *retirement*, early *retirement*, or disability retirement under a defined benefit plan of a retirement system. With respect to a defined benefit plan, the term does not mean an annuity.

(b) in the case of the defined contribution plan, a benefit as defined in subsection (9)(b).

(38) "Retirement plan" or "plan" means either a defined benefit plan or a defined contribution plan under one of the public employee retirement systems enumerated in 19-2-302.

(39) "Retirement system" or "system" means one of the public employee retirement systems enumerated in 19-2-302.

(40) "Service" means employment of an employee in a position covered by a retirement system.

(41) *"Service credit" means the periods of time for which the required contributions have been made to a retirement plan and that are used to calculate retirement benefits or survivorship benefits under a defined benefit retirement plan.*

(42) *"Service retirement benefit" means the retirement benefit that the member may receive at normal retirement age.*

~~(41)~~ (43) "Statutory beneficiary" means the surviving spouse or dependent child or children of a member of the highway patrol officers', municipal police officers', or firefighters' unified retirement system who are statutorily designated to receive benefits upon the death of the member.

~~(42)~~ (44) "Supplemental cost" means an element of the total actuarial cost of a defined benefit retirement plan arising from benefits payable for service performed prior to the inception of the retirement plan or prior to the date of contribution rate increases, changes in actuarial assumptions, actuarial losses, or failure to fund or otherwise recognize normal cost accruals or interest on supplemental costs. These costs are included in the unfunded actuarial liabilities of the retirement plan.

~~(43)~~ (45) "Survivorship benefit" means payments for life to the statutory or designated beneficiary of a deceased member who died while in service under a defined benefit retirement plan.

~~(44)~~ (46) "Termination of employment" or "termination of service" means that the member has severed the employment relationship with the employer and has been paid all compensation due upon termination of employment, including but not limited to payment of accrued annual leave credits, as provided in 2-18-617, and payment of accrued sick leave credits, as provided in 2-18-618. For purposes of this subsection, compensation as a result of legal action, court order, appeal, or settlement to which the board was not party is not a payment due upon termination.

~~(45)~~ (47) "Unfunded actuarial liabilities" or "unfunded liabilities" means the excess of a defined benefit retirement plan's actuarial liabilities at any given point in time over the value of its cash and investments on that same date.

~~(46)~~ (48) "Vested account" means an individual account within a defined contribution plan that is for the exclusive benefit of a member or the member's beneficiary. A vested account includes all contributions and the income on all contributions in each of the following accounts:

- (a) the member's contribution account;;
- (b) the vested portion of the employer's contribution account;; and
- (c) the member's account for other contributions.

~~(47)~~ (49) "Vested member" or "vested" means:

(a) with respect to a defined benefit plan, a member or the status of a member who has attained the minimum membership service requirements to be eligible for retirement benefits under the retirement plan; or

(b) with respect to the defined contribution plan, a member or the status of a member who meets the minimum membership service requirement of 19-3-2116.

~~(48)~~ (50) "Written application" or "written election" means a written instrument, prescribed by the board or required by law, properly signed and filed with the board, that contains all required information, including documentation that the board considers necessary."

**Section 4.** Section 19-2-403, MCA, is amended to read:

**"19-2-403. Powers and duties of board.** (1) The board shall administer the provisions of the chapters enumerated in 19-2-302.

(2) The board may establish rules that it considers proper for the administration and operation of the retirement systems and enforcement of the chapters under which each retirement system is established.

(3) The board shall establish uniform rules that are necessary to determine service credit for fractional years of service.

(4) The board shall determine who are employees within the meaning of each retirement system. The board is the sole authority for determining the conditions under which persons may become members of and receive benefits under the retirement systems.

(5) The board shall determine and may modify retirement benefits under the retirement systems. Benefits may be paid only if the board decides, in its discretion, that the applicant is, under the provisions of the appropriate retirement system, entitled to the benefits.

(6) In matters of board discretion under the systems, the board shall treat all persons in similar circumstances in a uniform and nondiscriminatory manner.

(7) The board shall maintain records and accounts it determines necessary for the administration of the retirement systems.

(8) Upon the basis of the findings of the actuary pursuant to 19-2-405, the board shall adopt actuarial rates and rates of regular interest it determines appropriate for the administration of the retirement systems.

(9) The board shall review the sufficiency of benefits paid by the retirement system or plan and recommend to the legislature those changes in benefits in a defined benefit plan or in contributions under the defined contribution plan that may be necessary for members and their beneficiaries to maintain a stable standard of living.

(10) The board may implement third-party mailings under the provisions of 2-6-109. If third-party mailings are implemented, the board shall adopt rules governing means of implementation, including the specification of eligible third parties, appropriate materials, and applicable fees and procedures. Fees generated by third-party mailings must be deposited in ~~an account in the state special revenue fund and must be appropriated to the board~~ *the appropriate retirement system fund* for the benefit of participants of retirement systems or plans administered by the board.

(11) In discharging duties, the board, a member of the board, or an authorized representative of the board may conduct hearings, administer oaths and affirmations, take depositions, certify to official acts and records, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records. Subpoenas must be issued and enforced pursuant to 2-4-104 of the Montana Administrative Procedure Act.

(12) The board may by rule or otherwise delegate to the board's executive director or any other staff member any of the powers or duties conferred by law upon the board except as otherwise provided by law and except for the adoption of rules and the issuance of final orders after hearings held pursuant to subsection (11) or the contested case procedure of the Montana Administrative Procedure Act.

(13) The board shall perform other duties and may exercise the powers concerning the defined contribution plan for plan members as provided in chapter 3, part 21, of this title."

**Section 5.** Section 19-2-506, MCA, is amended to read:

**"19-2-506. Payment of contributions by employers — accompanying reports — penalty.** (1) The board shall prescribe by rule the procedure for payment of retirement contributions for the retirement systems administered by the board. Each employer shall pick up the employee contributions and remit the employer and employee contributions required by the member's retirement system. *Payments must be considered delinquent until both the required contributions and the valid payroll report are received by the board.*

(2) The board may collect payments delinquent under subsection (1) with an interest penalty at the rate of 9% a year or \$10 a day, whichever is greater. The board may, in its discretion, waive the penalty. The collection may be made by either:

- (a) an action in a court of competent jurisdiction against the employer; or
- (b) deductions, at the request of the board, from any other money payable to the employer by any agency or fund of the state.

(3) The board shall prescribe by rule the procedure for submitting employer reports. The reports must include data about member and nonmember employees who work for the employer. The data required must include items such as compensation paid, hourly rates, changes in pay status, current home addresses, and any other data concerning employees that the board needs to administer the specific retirement system or plan. The board shall establish the method of reporting, the reporting period, and the frequency of reports to meet the demands of the relevant retirement system or plan. *The board may establish by rule the penalty fees for noncompliance in reporting any of the required information and the procedure for collection of the fees.*

(4) Each employer shall furnish additional information concerning members that the board may request in connection with claims by members for benefits or service under a retirement system.

(5) The board, from time to time, may send materials to an employer for redistribution to employees. To facilitate distribution, each employer shall provide the board with a point of contact responsible for distributing the materials."

**Section 6.** Section 19-2-603, MCA, is amended to read:

**"19-2-603. Reinstatement after withdrawal of contributions.** (1) Except as otherwise provided in chapter 3, part 21, of this title and this section, a person who again becomes a 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 ~~credit for any~~ previous membership service *or service credit*. The person 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 credits credit* previously canceled must be reinstated.

(2) Regardless of whether this redeposit is made, the documents held by the retirement system as executed by the member prior to termination of membership must be held by the system for the same purposes as prior to termination, and beneficiaries nominated in the documents continue unchanged until changed as provided in ~~this section~~ 19-2-801."

**Section 7.** Section 19-2-702, MCA, is amended to read:

**"19-2-702. Membership service.** A member who is not retired must receive membership service for all periods of service, regardless of hours worked or compensation received during that service. The *membership* service must be used to determine:

- (1) whether a member is vested;
- (2) when the member is eligible for ~~early or normal~~ service retirement, *early retirement*, or disability retirement; or
- (3) the eligibility of beneficiaries for survivorship benefits."

**Section 8.** 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 contribute amounts in addition to the mandatory employee contributions

required by the member's retirement system 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 ~~credits~~ *credit*, membership service, or contributions.

(3) A 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, installment payments, or a combination of a lump-sum payment and installment payments.

(4) Installment payments must be paid directly to the board, unless the member elects to make payments by irrevocable payroll deduction. The minimum installment period for payments made directly to the board 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) must provide that the deductions are to be made over a period of time of no less than 3 months and no more than 5 years in duration;

(d) 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

(e) must specify that the 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 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 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 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, *except when a member with an existing contract to purchase service credit elects to transfer to the defined contribution retirement plan pursuant to 19-3-2111(7) or to the optional retirement program pursuant to 19-3-2112(2)(j).*

(7) If a member terminates service 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 as of the date of termination unless further payment is made as provided in this subsection. In the case of a termination, 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 9.** Section 19-2-706, MCA, is amended to read:

**"19-2-706. Additional service credit for member involuntarily terminated from membership service.** (1) An employee of the state or university system is entitled to the involuntary termination provision provided in subsection (3) if:

(a) the employee is a member of the public employees', game wardens' and peace officers', sheriffs', or highway patrol officers' retirement system;

(b) the employee's active service is involuntarily terminated because of elimination of the employee's position 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 or, in the case of a legislator, because of term limits terminating the service of the legislator in either one of the houses of the legislature;

(c) the employee is eligible for ~~a normal~~ service retirement or early retirement under the applicable provisions of the retirement system to which the member belongs; and

(d) the employee waives termination benefits for which the employee would otherwise be eligible under the State Employee Protection Act.

(2) The cost of each year of service *credit* purchased under this section is the total actuarial cost of purchasing the service *credit* based on the most recent actuarial valuation of the retirement system.

(3) The employer of an eligible member under subsection (1) shall pay a portion of the total cost of purchasing up to 3 years of additional service *credit* that the member was qualified to purchase under 19-3-513, 19-6-804, 19-7-804,

or 19-8-904. The employer-paid portion ~~applied toward the service purchase~~ must be calculated using the formula  $A \times B \times C$  when:

(a) A is equal to a maximum of 3 additional years of service *credit* that the member is eligible to purchase;

(b) B is equal to the sum of the employer and employee contribution rates in the member's retirement system; and

(c) C is equal to the member's gross compensation paid during the immediate preceding 12 months of membership service. The employer may not be charged more than the total actuarial cost of the service *credit* purchased by the terminated employee.

(4) The member shall pay the difference, if any, between the full actuarial cost of the service *credit* to be purchased and the ~~amount contributed by contribution required from the employer~~ under subsection (3). A member may elect to purchase less than the full amount of service for which the member is eligible under this section, but the election may not reduce the amount of the employer's contribution as calculated under subsection (3).

(5) The board may allow an employer to pay the contributions required under subsection (3) in installments for up to 10 years and may charge interest at a rate set by the board pursuant to 19-2-403.

(6) (a) A member who has received additional service *credit* under this section and who returns to employment for the same jurisdiction for 960 or more hours in a calendar year in a position covered by the public employees' retirement system or for 600 or more hours in a calendar year in a position covered under any other retirement system forfeits the additional service *credit*. The employer's contribution to purchase that member's additional service *credit*, minus any retirement benefits already paid, must be credited to the employer.

(b) As used in ~~this~~ subsection (6)(a), the ~~same jurisdiction~~ term "same jurisdiction" means all agencies of the state, including the university system."

**Section 10.** Section 19-2-708, MCA, is amended to read:

**"19-2-708. Rollover of contributions.** (1) A member who elects to and is eligible to purchase service *credit* from another retirement system or plan into a retirement system provided for in 19-2-302 may, prior to retirement, file a written application with the board to roll over, in accordance with the requirements of this part, to the retirement system to which the member belongs all or a portion of the member's account with the other eligible retirement system or plan. The total amount of the rollover to the retirement system may not exceed the amount of service *credit* that the member is allowed to purchase as a member of that system. The rollover must be completed prior to the member's retirement.

(2) The board shall accept a direct rollover of eligible distributions from another eligible retirement plan as provided in subsection (1) only to the extent permitted by section 401(a)(31) of the Internal Revenue Code."

**Section 11.** Section 19-2-709, MCA, is amended to read:

**"19-2-709. Transfer of service and contributions from other Montana public employee retirement systems.** (1) A member eligible to transfer service *credit*, pursuant to ~~19-3-509, [section 1] and 19-3-511, 19-6-802, 19-7-802, 19-8-902, 19-9-405, or 19-13-404,~~ into the system to which the member belongs shall complete the transfer prior to the member's retirement.

(2) The accumulated contributions to be transferred by the member may include both taxed contributions and tax-deferred contributions and interest. However, if less than all of the member's accumulated contributions on deposit in a pension trust fund are being transferred, the transfer of taxed and tax-deferred amounts must be made on a proportionate basis, with the remainder refunded to the member. The transferring agency shall at the time of the transfer identify the taxed and tax-deferred amounts being transferred to the board."

**Section 12.** Section 19-2-801, MCA, is amended to read:

**"19-2-801. Designation of beneficiary.** (1) In the absence of any statutory beneficiaries, designated beneficiaries are the natural persons, charitable organizations, *estate of the payment recipient*, or trusts for the benefit of natural living persons that the member or payment recipient designates on the membership card or other form provided by the board. Unless otherwise provided by statute, a member or payment recipient may revoke the designation and name different designated beneficiaries by filing with the board a new membership card or other form provided by the board. *The most recent beneficiary designation filed with the board is effective for all purposes.*

(2) *If a statutory or designated beneficiary predeceases the member or payment recipient, the predeceased beneficiary's share must be paid to the remaining statutory or designated beneficiaries in amounts proportional to each remaining statutory or designated beneficiary's original share.*

~~(2)~~(3) A statutory or designated beneficiary who renounces an interest in the payment rights of a member or payment recipient will be considered, with respect to that interest, as having predeceased the member or payment recipient."

**Section 13.** Section 19-2-802, MCA, is amended to read:

**"19-2-802. Effect of no designation or no surviving designated beneficiary.** (1) If a statutory or designated beneficiary does not survive the member or payment recipient, the estate of the member or payment recipient is entitled to any accrued lump-sum payment or accrued retirement benefit not received prior to the member's or payment recipient's death. If the estate, *as either a designated beneficiary or as a beneficiary by default as provided in this subsection*, would not be probated but for the amount due *to the estate* from the retirement system, all of the amount due *to the estate* must be paid directly, without probate, to the surviving next of kin of the deceased or the guardians of the survivor's estate, share and share alike.

(2) Payment must be made in the same order in which the following groups are listed:

- (a) husband or wife;
- (b) children;
- (c) father and mother;
- (d) grandchildren;
- (e) brothers and sisters; or
- (f) nieces and nephews.

(3) A payment may not be made to a person included in any of the groups listed in subsection (2) if at the date of payment there is a living person in any of the groups preceding the group of which the person is a member, as listed.

Payment must be made upon receipt from the person of an affidavit, upon a form supplied by the board, that there are no living individuals in the groups preceding the group of which the person is a member and that the estate of the deceased will not be probated.

(4) The payment must be in full and complete discharge and acquittance of the board and system on account of the member's or payment recipient's death."

**Section 14.** 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

(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) 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) ~~Service retirement~~ *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 apportioned 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. Conversion of a disability retirement to a service retirement pursuant to 19-2-406(4), 19-3-1015(2), 19-6-612(2), or 19-8-712(2) does not increase the maximum monthly amount that may be apportioned to an alternate payee.

(c) Retirement benefit adjustments for which a participant is eligible after retirement may be apportioned as a percentage only if existing benefit

payments are apportioned as a percentage. The adjustments must be apportioned as a percentage in the same ratio as existing benefit payments.

(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 apportioned 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. A new account may not be established for an alternate payee.

(b) If the participant is receiving periodic payments ~~from~~ 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 apportioned 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 15.** Section 19-2-908, MCA, is amended to read:

**"19-2-908. Time of commencement of benefit — rulemaking.** (1) (a) The board shall grant a benefit to any member, or the member's statutory or designated beneficiary, who has fulfilled all eligibility requirements, terminated ~~covered~~ service, and filed the appropriate written application with the board. However, the board may, on its own accord and without a written application, begin benefit payments to a member or beneficiary in order to comply with section 401(a)(9) of the Internal Revenue Code.

(b) A member may apply for retirement benefits before terminating ~~covered~~ service, but commencement of the benefits must be as provided in this section.

(2) (a) Except as provided in subsection (2)(b), the ~~service~~ retirement benefit may commence on the first day of the month following the eligible member's last day of membership service or, if requested by the inactive member in writing, on the first day of a later month following filing of the written application.

(b) If an elected official's term of office expires before the 15th day of the month, the official may elect that ~~service~~ retirement benefits from a defined

benefit plan commence on the first day of the month following the official's last full month in office. An official electing this option shall file a written application with the board. An official electing this option may not earn membership service, service credit, or compensation for purposes of calculating highest average compensation or final average compensation, as defined under the provisions of the appropriate retirement system, in the partial month ending the official's term, and compensation earned in that partial month is not subject to employer or employee contributions.

(3) The disability retirement benefit payable to a member must commence on the day following the member's termination from service.

(4) Monthly survivorship benefits from a defined benefit plan must commence on the day following the death of the member.

(5) Estimated and finalized benefit payments must be issued as provided in rules adopted by the board.

(6) With respect to the defined contribution plan, the board shall adopt rules regarding the commencement of benefits that are consistent with applicable provisions of the Internal Revenue Code and its implementing regulations."

**Section 16.** Section 19-2-909, MCA, is amended to read:

**"19-2-909. Execution or withholding for support obligation — rulemaking.** (1) Benefits in the retirement systems or plans provided for in chapters 3, 5 through 9, 13, and 17 are subject to execution and income withholding for the payment of a participant's support obligation.

(2) For purposes of this section, the following definitions apply:

(a) "Execution" means a warrant for distraint issued or a writ of execution obtained by the department of public health and human services when providing support enforcement services under Title IV-D of the Social Security Act.

(b) "Income withholding" means an income-withholding order issued under the provisions of Title 40, chapter 5, part 3 or 4, or an income-withholding order issued in another state as provided in 40-5-157.

(c) "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.

(d) "Support obligation" has the meaning provided in 40-5-403 for a support order.

(3) The execution or income-withholding 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.

(4) An execution or income-withholding order applied to a defined benefit retirement plan may provide for payment only as follows:

(a) ~~Service retirement~~ *Retirement* benefit payments or refunds may be apportioned by directing payment of a percentage of the amount payable or payment of a fixed amount of no more than the amount payable to the participant.

(b) The maximum amount of disability or survivorship benefits that may be apportioned and paid under this section 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.

(c) Retirement benefit adjustments for which a participant is eligible after retirement may be apportioned only if existing benefit payments are apportioned. The adjustments must be apportioned in the same ratio as existing benefit payments.

(5) With respect to a defined contribution plan, an execution or income-withholding 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 apportioned 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. A new account may not be established for an alternate payee.

(b) If the participant is receiving periodic payments ~~from~~ 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.

(6) The duration of monthly or other periodic payments apportioned 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.

(7) The board shall adopt rules to provide for the administration of execution or income-withholding orders."

**Section 17.** Section 19-2-1010, MCA, is amended to read:

**"19-2-1010. Retaining qualified plan status — content of plan document — board rulemaking authority.** (1) The board shall administer the plan in the manner required to satisfy the applicable qualification requirements for a qualified governmental plan, as provided in the Internal Revenue Code. If a statutory provision affecting a retirement plan administered by the board conflicts with a qualification requirement in section 401 of the Internal Revenue Code or the retirement plan's status as a governmental plan under section 414(d) of the Internal Revenue Code and with consequent federal regulations, the provision is either ineffective or must be interpreted to conform with the federal qualification requirements and allow the plan to retain its qualified status.

(2) For the purposes of section 401(a) of the Internal Revenue Code, the plan document for each retirement system is composed of the applicable provisions of the Montana constitution, this chapter, the applicable chapter in Title 19 governing the system, and applicable rules, *policies*, and *plan documents* adopted by the board.

(3) The board may adopt rules to implement this section."

**Section 18.** 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, or a leave of absence, before any pretax deductions allowed by state or federal law are made.

(b) Compensation does not include:

(i) the payments or contributions made in lieu of wages for an individual subject to 19-3-403(4)(a);

(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; and

(v) lump-sum payments for compensatory leave, sick leave, or annual leave paid without termination of employment.

(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, except that a nonprofit mental health corporation established pursuant to 53-21-204 may not be an employer with regard to employees hired after June 30, 1999.

(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) “Highest average compensation” means a member’s highest average monthly compensation during any 36 consecutive months of membership service *or, with respect to a member who has attained 65 years of age but has not served at least 36 months, total compensation earned divided by the number of months the member has served.* 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 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.

(7) “System” or “retirement system” means the public employees’ retirement system established in 19-3-103.”

**Section 19.** Section 19-3-401, MCA, is amended to read:

**“19-3-401. Membership — inactive vested members — inactive nonvested members.** (1) Except as otherwise provided in this chapter, all employees shall become members of the defined benefit plan on the first day of



service. Each employer shall file with the board information affecting their employees' status as members as the board may require. An employee may become a member of the defined contribution plan only as provided in Title 19, chapter 3, part 21.

(2) A member of the defined benefit plan with at least 5 years of membership service who terminates service and does not take a refund of the member's accumulated contributions is an inactive vested member and retains the right to purchase service *credit* and to receive a service retirement benefit subject to the provisions of this chapter.

(3) A member of the defined benefit plan with less than 5 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible for any benefits from the retirement plan. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions.

(4) A member of either the defined benefit plan or the defined contribution plan who returns to service within 30 days of termination of service is an active member. Except as otherwise provided in this chapter, a member of either the defined benefit plan or the defined contribution plan who terminates one service but remains in another service or subsequently reenters service is an active member.

(5) Time during which an employee of a school district is absent from service during official vacation is counted as *membership* service in determining eligibility for ~~membership under this chapter~~ *retirement benefits*."

**Section 20.** 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:

- (1) inmates of state 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 ~~service~~ *employment*. It is the purpose of this subsection to prevent a person from receiving credit for the same ~~service~~ *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, solely for the purposes of making regular contributions, as permanently separated from service. Exclusion under this subsection is subject to the following exceptions:

(a) When an employer has entered into a collective bargaining agreement that includes provisions for payments or contributions by the employer in lieu of wages to a retirement or pension plan qualified by the internal revenue service for its employees, the employees 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) 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;

(6) 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 ~~credited~~ service *credit* for the excluded service under the provisions of 19-3-505.”

**Section 21.** Section 19-3-412, MCA, is amended to read:

**“19-3-412. Optional membership.** (1) The following employees in covered employment may become members of the retirement system at their option by filing an irrevocable, written application with the board within 180 days of commencement of their employment:

(a) elected officials of the state or local governments who are paid on a salary or wage basis rather than on a per diem or other reimbursement basis;

(b) employees serving in employment that does not cumulatively exceed a total of 960 hours of covered employment with all employers under this chapter in any fiscal year;

(c) employees directly appointed by the governor;

(d) employees working 6 months or less for the legislative branch to perform work related to the legislative session;

(e) the chief administrative officer of any city or county;

(f) employees of county hospitals or rest homes.

(2) (a) Except as provided in subsection (2)(b), employees and officials described in subsections (1)(a) through (1)(f) who are employees or officials but not members on July 1, 1999, have until December 1, 1999, to file an irrevocable, written application with the board.

(b) A legislator may also become a member as of the date prior to December 30, 2000, that the legislator filed an irrevocable written application with the board to become a member and paid the employee share of contributions determined by the board to be required to purchase the legislator’s prior service *credit*. However, the legislator shall purchase at least 5 years of service *credit* or, if the legislator has less than 5 years of membership service, service *credit* equal to all of the legislator’s membership service. The legislative branch is responsible for paying the amount determined by the board to be the employer’s share of contributions required to purchase a legislator’s service *credit* under this subsection (2)(b).

(3) If an employee declines optional membership, the employee shall sign a statement waiving membership and file it with the employer. The employer shall file the statement with the board and retain a copy of the statement. An

employee who declines optional membership may not receive membership ~~credit~~ service or service credit for the employment for which membership was declined.

(4) An employee who declined optional membership but later becomes a member may purchase service credit for the period of time beginning with the date of employment in which membership was declined to the commencement of membership. Purchase of service *credit* pursuant to this subsection must comply with 19-3-505.

(5) Membership in the retirement system is not optional for an employee who is already a member. Upon employment in a position for which membership is optional:

(a) a member who was an active member before the employment remains an active member;

(b) a member who was an inactive member before the employment becomes an active member; and

(c) a member who was a retired member before the employment is subject to part 11 of this chapter.

(6) An employee who declines membership while employed in a position for which membership is optional may not later become a member while still employed in that position. If, after a break in service of 30 days or more, an employee who was a member in an optional membership position is reemployed in the same position or is employed in a different position for which membership is optional, the employee shall again choose or decline membership. However, if the break in service is less than 30 days, an employee who declined membership is bound by the employee's original decision to decline membership.

(7) An employee accepting a position that requires membership shall become a member even if the employee previously declined membership and did not have a 30-day break in service.

(8) If an employee or official fails to file with the board an irrevocable, written application within the time allowed in this section, the employee or official waives membership."

**Section 22.** Section 19-3-503, MCA, is amended to read:

**"19-3-503. Application to purchase military service.** (1) (a) Except as provided in subsection ~~(2)~~ (1)(b) and subject to 19-3-514, a member with at least 10 years of service credit may, at any time prior to retirement, file a written application with the board to purchase service credit *and membership service* for up to 5 years of the member's active service in the armed forces of the United States, including the first special service force or the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to August 15, 1945.

~~(b) To purchase this service, the member shall pay the actuarial cost of the member's military service, based on the system's most recent actuarial valuation.~~

~~(2)~~(b) A member is not eligible to purchase *active military service credit and membership service* under ~~this section~~ subsection (1)(a) if the member:

~~(a)~~(i) has retired from active duty in the armed forces of the United States, including the first special service force or the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to

August 15, 1945, with a military service retirement benefit based on that military service;

~~(b)(ii)~~ is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

~~(c)(iii)~~ is eligible to receive credit for that service in any other retirement system or plan.

(2) (a) *Except as provided in subsection (2)(b) and subject to 19-3-514, a member with at least 10 years of service credit may, at any time prior to retirement, file a written application with the board to purchase service credit and membership service for up to 5 years of the member's reserve military service in the armed forces of the United States.*

(b) *A member is not eligible to purchase reserve military service credit and membership service under subsection (2)(a) if the member is eligible, pursuant to 19-2-707, to receive credit in the system for that service.*

(3) *To purchase service credit and membership service under this section, the member shall pay the actuarial cost of the member's active or reserve military service credit based on the system's most recent actuarial valuation."*

**Section 23.** Section 19-3-504, MCA, is amended to read:

**"19-3-504. Absence due to illness or injury.** (1) Time, not to exceed 5 years, during which a member is absent from service because of injury or illness is considered membership service if, within 1 year after the end of the absence, the injury or illness is determined to have arisen out of and in the course of the member's employment. However, the member may not earn service credits for this period unless the member complies with subsections (2) and (3), in which case the absence is considered as time spent in service for both service ~~credits~~ credit and membership service.

(2) (a) A member absent because of an employment-related injury entitling the member to workers' compensation payments may, upon the member's return to service, contribute to the retirement system an amount equal to the contributions that would have been made by the member to the system on the basis of the member's compensation at the commencement of the member's absence plus regular interest accruing from 1 year from the date after the member returns to ~~covered~~ service to the date the member contributes for the period of absence.

(b) Whenever a member elects to contribute under subsection (2)(a), the employer shall contribute employer contributions for the period of absence based on the salary as calculated in subsection (2)(a) and may pay interest on the employer's contribution calculated in the same manner as interest on the employee's contribution under subsection (2)(a). An employer electing to make an interest payment shall do so for all employees similarly situated. If the employer elects not to pay the interest costs, this amount must be paid by the employee.

(3) At some time after returning to ~~covered~~ service, a member shall file with the board a written notice of the member's intent to pay the contributions under subsection (2).

(4) A member loses the right to contribute for an absence under this section if all of the member's accumulated contributions are refunded pursuant to 19-2-602 or for the period of time during which retirement benefits are received if the member retires during the absence."

**Section 24.** Section 19-3-505, MCA, is amended to read:

**“19-3-505. Purchase of previous employment with employer.** (1) Subject to the provisions of this section, a member who has employment for which optional membership was declined or employment with an employer prior to the employer’s contract coverage may file a written application with the board to purchase all or a portion of the employment for service credit. The application must include salary information certified by the member’s employer or former employer.

(2) (a) A purchase of service *credit* under this section is subject to the board’s approval.

(b) If the board approves the request, the member shall pay the amount that the member and the member’s employer would have contributed during the period of employment as if the employment had been covered by the retirement system and shall pay the regular interest that would have accumulated on the amount to the time of payment. However, the employer may pay the employer’s portion, including accrued regular interest as provided in subsection (2)(c).

(c) The employer shall establish a policy as to the payment of retroactive employer contributions and apply this policy indiscriminately for all employees and former employees. All employee appeals of discrimination are subject to the determination of the board. All successful appeals obligate the employer to pay the employer and employee contributions with accrued interest for that employee filing the appeal with the board. Each appeal must be heard on its individual merits and may not bind the employer to pay all retroactive payments for all former and present employees.”

**Section 25.** Section 19-3-510, MCA, is amended to read:

**“19-3-510. Employment in United States government.** (1) A member who is assigned to an agency of the United States government under Title IV, the Intergovernmental Personnel Act of 1970, may purchase the federal employment as service *credit* in the retirement system under subsection (2) if:

(a) the member has accrued 5 years or more of membership service in the retirement system; and

(b) the member returns to full-time service with the former state or local government employer for at least 1 year after completing employment in the United States government.

(2) A member of the retirement system who is assigned to an agency of the United States government has the option to:

(a) continue the member’s payments into the pension trust fund; or

(b) purchase *service credit* for the period of federal employment under this section within 2 years after return to service under the retirement system.

(3) Salary earned while on assignment to an agency of the United States government must be considered compensation for the purposes of the retirement system and may be included in the determination of highest average compensation, provided that the highest average compensation does not exceed 100% of the member’s highest annual compensation earned as a state or local government employee.”

**Section 26.** Section 19-3-511, MCA, is amended to read:

**“19-3-511. Transfer and purchase of service credits and contributions from teachers’ retirement system.** (1) Except as provided in

subsection (3)(b), an active member may, at any time before retirement, file a written application with the board to purchase in the public employees' retirement system the member's service in the teachers' retirement system to the extent that the member has either received or is eligible to receive a refund for the service.

(2) The cost of purchasing service *credit* under this section is the sum of subsections (2)(a) and (2)(b) as follows:

(a) The teachers' retirement system shall transfer an amount equal to 72% of the amount payable by the member.

(b) The member shall pay either directly or by transferring contributions on account with the teachers' retirement system an amount equal to the member's accumulated contributions at the time that active membership was terminated with the teachers' retirement system, plus accrued interest. Interest must be calculated from the date of termination until payment is received by the public employees' retirement system, based on the interest tables in use by the teachers' retirement system.

(3) (a) The amount of service credit granted in subsection (1) must be on a month-by-month basis.

(b) Service credit transferred from the teachers' retirement system is subject to the provisions and limitations of 19-3-514, *except as provided in subsection (3)(c)*.

(c) *Active service transferred from the teachers' retirement system or refunded service from the teachers' retirement system that is eligible to be purchased under this section is not subject to service credit limitations.*

(4) Subject to the provisions of 19-2-403, the board is the sole authority in determining the amount of service credit that a member may purchase under this section and the amount paid to the retirement system under subsection (2).

(5) If an active member who ~~also~~ has service credit in the teachers' retirement system dies before the member purchases this service *credit* in the public employees' retirement system and if the service ~~credits~~ *credit* from both systems, when combined, ~~entitle~~ *entitles* the member's designated beneficiary to a survivorship benefit, the payment of the survivorship benefit is the liability of the public employees' retirement system. Before payment of the survivorship benefit, the teachers' retirement board shall transfer to the public employees' retirement system the contributions necessary to purchase this service *credit* in the public employees' retirement system, as provided in subsection (2).

(6) If the board determines that a member was erroneously classified and reported to the teachers' retirement system, the member's accumulated contributions and service *credit*, together with the employer contributions plus interest, must be transferred to the public employees' retirement system. Employee and employer contributions due as calculated under 19-3-315 and 19-3-316 are the liability of the employee and the employing entity, respectively, where the error occurred. For the period of time that the employer contributions are held by the teachers' retirement system, interest paid on employer contributions transferred under this subsection must be calculated at the short-term investment pool rate earned by the board of investments in the fiscal year preceding the transfer request."

**Section 27.** Section 19-3-512, MCA, is amended to read:

**“19-3-512. Purchase of service credit from other public retirement systems.** (1) Subject to 19-3-514, a member with at least 5 years of membership service in the public employees’ retirement system may purchase *service credit* for:

(a) public service employment covered under a public retirement system other than a system provided for in Title 19 for which the member received a refund of the member’s membership contribution; and

(b) public service employment that occurred before the public employer adopted a public retirement system.

(2) A member may not purchase more than 5 years of service *credit* under this section. To purchase this service *credit*, a member shall:

(a) at any time before retirement, file a written application with the board; and

(b) pay the actuarial cost of the service *credit* in the public employees’ retirement system, as determined by the board, based on the system’s most recent actuarial valuation.

(3) Service *credit* purchased under this section may not be used to qualify a member to purchase military service under 19-3-503.

(4) Service *credit* purchased under this section may not be used in calculating a member’s retirement benefit unless the member’s last 5 years of service credit were earned under the public employees’ retirement system. If, upon the member’s retirement, the member’s purchased service *credit* cannot be used in calculating the member’s retirement benefit, the member must receive a refund of the amount paid to purchase the service *credit*, plus regular interest on that amount.”

**Section 28.** Section 19-3-513, MCA, is amended to read:

**“19-3-513. Application to purchase additional service.** (1) Subject to 19-3-514, a member with at least 5 years of membership service may, at any time before retirement, file a written application with the board to purchase 1 year of additional service credit for each 5 years of membership service.

(2) To purchase this service *credit* under this section, a member shall pay the actuarial cost of the service *credit*, based on the system’s most recent actuarial valuation.

(3) Service *credit* purchased under this section is not membership service and may not be used to qualify a member for service retirement.”

**Section 29.** Section 19-3-514, MCA, is amended to read:

**“19-3-514. Service purchase limit — exception.** (1) Except as provided in subsection (2), a member may not purchase more than a combined total of 5 years under 19-3-503, 19-3-511(3)(b), 19-3-512, and 19-3-513.

(2) A member who has purchased service *credit* under 19-3-503 or 19-3-512 on or before January 1, 1990, and who elects to purchase service *credit* under 19-3-513 must receive credit for the full months of service *credit* purchased on or before January 1, 1990.”

**Section 30.** Section 19-3-521, MCA, is amended to read:

**“19-3-521. Service credit for legislative members.** A member of the legislature of Montana must ~~be credited with~~ receive membership service and

*service credit* for that portion of each year for which the member pays regular contributions.”

**Section 31.** Section 19-3-904, MCA, is amended to read:

**“19-3-904. Amount of service retirement benefit.** (1) Except as provided in subsection (2), the monthly amount of *service* retirement benefit payable to a member following ~~service~~ retirement is the greater of subsection (1)(a) or (1)(b) as follows:

(a) one fifty-sixth of the member’s highest average compensation multiplied by the number of years of the member’s total service credit; or

(b) a monthly benefit that is the sum of:

(i) the actuarial equivalent of double the member’s regular contributions and regular interest; plus

(ii) the actuarial equivalent of any additional contributions and regular interest.

(2) ~~The~~ For a member with at least 25 years of membership service, the monthly amount of *service* retirement benefit payable to a member who has at least 25 years of membership service is *must be* equal to one-fiftieth of the member’s highest average compensation multiplied by the number of years of the member’s total service credit *instead of the amount calculated under subsection (1)(a).*”

**Section 32.** Section 19-3-906, MCA, is amended to read:

**“19-3-906. Early retirement benefit.** (1) The amount of retirement benefit payable to a member following early retirement is the actuarial equivalent of the accrued portion of the service retirement benefit that would have been payable to the member commencing at age 60 or upon completion of 30 years of *membership* service ~~credit~~ pursuant to 19-3-904.

(2) The early retirement benefit must be determined as prescribed in 19-3-904, with the exception that the benefit must be reduced as follows:

(a) by 1/2 of 1% multiplied by the number of months up to a maximum of 60 months by which the retirement date precedes the date on which the member would have retired had the member attained 60 years of age or had the member completed 30 years of membership service; and

(b) by 3/10 of 1% multiplied by the number of months in excess of the 60 months in subsection (2)(a) but not to exceed 60 additional months that the retirement date precedes the date on which the member would have retired had the member attained 60 years of age or had the member completed 30 years of membership service.

(3) The actuarial reduction provided for in this section must be adjusted for any additional service *credit* purchased under 19-3-513.”

**Section 33.** Section 19-3-908, MCA, is amended to read:

**“19-3-908. Retirement incentive program — window of eligibility.** (1) Except as provided in subsection (4), a person who is an active member on February 1, 1993, and who voluntarily terminates service or whose service is involuntarily terminated because of a reduction in force on or after June 25, 1993, but before January 1, 1994, and who is eligible for a normal service retirement under 19-3-901 or early retirement under 19-3-902 is entitled to the retirement incentive provided in subsection (2).



(2) (a) The employer of an eligible member under subsection (1) shall pay the total cost of purchasing up to 3 years of additional service *credit* that the member is qualified to purchase under 19-3-513.

(b) The department of revenue shall pay the cost of purchasing up to 3 years of additional service *credit* for qualifying county assessors and deputy assessors eligible under subsection (1) whose employing county has not elected for participation in the incentive program as provided in subsection (4).

(c) A member is entitled to a refund for that portion of previously purchased additional service that would otherwise cause the member to be unqualified to receive all or part of the additional service *credit* provided in this section.

(3) An active member who is involuntarily terminated because of a reduction in force on or after March 1, 1993, but before June 25, 1993, and who, if the member had not been terminated, would have been eligible under subsection (1) for the retirement incentive is entitled to the retirement incentive under subsection (2) if the member was, at the time of termination, eligible for ~~normal~~ service retirement under 19-3-901 or early retirement under 19-3-902 and retires on or after June 25, 1993.

(4) Subject to subsection (2)(b), a contracting employer's participation in the incentive program described in this section is optional. A contracting employer may elect to provide the incentive by filing with the board a written notice of election on or before June 1, 1993, and complying with rules adopted pursuant to subsection (6).

(5) County assessors and deputy assessors are eligible for the incentive program even if the employing county has not elected to participate in the incentive program.

(6) The board may allow an employer to pay the contributions required under subsection (2)(a) in installments for up to 10 years and may charge interest at a rate set by the board pursuant to 19-2-403. The board shall adopt rules to implement the provisions of this section.

(7) A member who has received additional service under this section and who returns to employment for the same jurisdiction for 960 or more hours in a calendar year in a position covered by the public employees' retirement system or for 600 or more hours in a calendar year in a position covered under any other retirement system shall forfeit the additional service. The employer's contributions to purchase that member's additional service *credit*, minus any retirement benefits already paid, must be refunded to the employer. For purposes of this subsection, all agencies of the state, including the university system, are considered the same jurisdiction and other public employers contracting with the retirement system are each considered separate jurisdictions."

**Section 34.** Section 19-3-1002, MCA, is amended to read:

**"19-3-1002. Eligibility for disability retirement.** (1) Except as provided in subsections (2) and (3), a member entering service prior to February 24, 1991, who is not eligible for service *retirement* or early retirement but *who* has at least 5 years of membership service and has become disabled while an active member is eligible for disability retirement, as provided in 19-3-1008(1).

(2) An active member ~~age~~ *who is 60 years of age or older and who has completed 5 years of membership service and has had a duty-related accident forcing the member to terminate employment but who has not received or is ineligible to receive workers' compensation benefits under Title 39, chapter 71,*

for the duty-related accident may conditionally waive the member's eligibility for a service retirement in order to be eligible for disability retirement. The waiver is effective only upon approval by the board of the member's written application for disability retirement. The board shall determine whether a member has become disabled. The board may request any information on file with the state compensation insurance fund concerning any duty-related accident. If information is not available, the board may request and the state fund shall then provide an investigative report on the disabling accident.

(3) (a) A member in service on February 24, 1991, has a one-time election to be covered for disability purposes under the provisions of 19-3-1008(2). This election is irrevocable and must be made in writing by the member no later than December 31, 1991. Coverage under the provisions of 19-3-1008(2) commences on the date the completed written election is received by the board or its designated representative. To be eligible for disability benefits under the provisions of this part, a member must have completed 5 years of membership service and must have become disabled while an active member.

(b) An individual becoming a member after February 24, 1991, who has completed 5 years of membership service and has become disabled while an active member is covered for disability purposes under the provisions of 19-3-1008(2) or (3)."

**Section 35.** Section 19-3-1008, MCA, is amended to read:

**"19-3-1008. Benefit for disability.** (1) The monthly amount of the *disability* retirement benefit payable to a member ~~eligible for disability retirement~~ under the provisions of 19-3-1002(1) is the greater of subsection (1)(a) or (1)(b) as follows:

(a) 90% of 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

(b) a retirement benefit equal to 25% of the member's highest average compensation.

(2) Except as provided in subsection (3), the monthly amount of retirement benefit payable to a member eligible for disability retirement under the provisions of 19-3-1002(3) is a retirement benefit 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.

(3) The monthly amount of retirement benefit payable to a member eligible for disability retirement under the provisions of 19-3-1002(3) who has at least 25 years of membership service is a retirement benefit equal to one-fiftieth 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.

(4) Subject to the provisions of part 11 of this chapter, a retired member receiving a disability retirement benefit on February 24, 1991, who has previously been granted a disability retirement benefit under the provisions of this section will continue to receive the monthly disability retirement benefit as calculated prior to February 24, 1991, subject to any postretirement or cost-of-living increases granted by the legislature."

**Section 36.** Section 19-3-1015, MCA, is amended to read:

**“19-3-1015. Medical examination of disability retiree — cancellation and reinstatement.** (1) The board may, in its discretion, require a disabled member to undergo a medical examination. The examination must be made by a physician or surgeon appointed by the board, at a place mutually agreed upon by the retired member and the board. Upon the basis of the examination, the board shall determine whether the disabled member is unable, by reason of physical or mental incapacity, to perform the essential elements of either the position held by the member when the member retired or the position proposed to be assigned to the member. If the board determines *that* the member is not incapacitated or if the member refuses to submit to a medical examination, the member's *disability* retirement benefit must be canceled.

(2) If the board determines that a disabled member should no longer be subject to medical review, the board may grant service retirement status to the member without recalculating the monthly benefit. The board shall notify the member in writing as to the change in status. If the disabled member disagrees with the board's determination, the member may file a written application with the board requesting that the board reconsider its action. The written application for reconsideration must be filed within 60 days after receipt of the notice of the status change.

(3) (a) Except as provided in subsections (3)(b) and (3)(c), a member whose disability retirement benefit is canceled because the board has determined that the member is no longer incapacitated must be reinstated to the position held by the member immediately before the member's retirement or to a position in a comparable pay and benefit category with duties within the member's capacity if the member was an employee of the state or of the university. If the member was an employee of a contracting employer, the board shall notify the proper official of the contracting employer that the disability retirement benefit has been canceled and that the former employee is eligible for reinstatement to duty. The fact that the former employee was retired for disability may not prejudice any right to reinstatement to duty that the former employee may have or claim to have.

(b) A member who is employed by an employer terminates any right to reinstatement provided by this section.

(c) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement to duty.

(4) If a member whose disability retirement benefit is canceled is not reemployed in a position subject to the retirement system, the member's service is considered, for the purposes of 19-2-602, to have been discontinued coincident with the commencement of the member's retirement benefit.”

**Section 37.** Section 19-3-1106, MCA, is amended to read:

**“19-3-1106. Limited reemployment — reduction of service retirement benefit upon exceeding limits — exception.** (1) A retired member under 65 years of age 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 retiree 65 years of age or older 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 benefits, 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 ~~covered~~ service beyond the applicable limitation during that calendar year.

(3) A retiree returning to employment covered by the retirement system and the returning employee's employer 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 month after retirement.

(4) A retiree returning to employment covered by the retirement system may elect to return to active membership at any time during this period of covered employment.

(5) A retired member 70 1/2 years of age or older who returns to employment covered by the retirement system is not subject to the hour or earnings limitations in subsections (1) and (2) or the reporting requirements in subsection (3)."

**Section 38.** Section 19-3-1201, MCA, is amended to read:

**"19-3-1201. Eligibility for death payments.** Upon receipt of a written application filed with the board by a designated beneficiary, the board shall grant a death ~~benefit~~ payment to the designated beneficiary of any member who dies:

- (1) while in service;
- (2) within 6 months after the discontinuance of service but before retirement;
- (3) while a recipient of a disability retirement benefit, if the benefit has been in effect less than 6 months; ~~or~~
- (4) while disabled, if the member has been continuously disabled since discontinuance of the member's service but is not receiving a disability retirement benefit; *or*
- (5) *while an inactive member.*"

**Section 39.** Section 19-3-1202, MCA, is amended to read:

**"19-3-1202. Amount of lump-sum death payment.** (1) The amount of payment to be made to those eligible for death payments is the sum of subsections (1)(a), ~~(2)~~ (1)(b), and ~~(3)~~ (1)(c) as follows:

- ~~(1)~~(a) the member's accumulated contributions;
- ~~(2)~~(b) an amount equal to one-twelfth of the compensation received by the member during the last 12 months of compensation multiplied by the smaller of six or the number of years of the member's service credit; and
- ~~(3)~~(c) the accumulated regular interest on the amounts in subsections ~~(1)~~ (1)(a) and ~~(2)~~ (1)(b) to the first day of the month in which the payment is made.

(2) *A beneficiary of an inactive member is not eligible to receive the payment described in subsection (1)(b).*"

**Section 40.** Section 19-3-1205, MCA, is amended to read:

**“19-3-1205. Amount of survivorship benefit.** The survivorship benefit payable to a member’s designated beneficiary is the actuarial equivalent of:

(1) the accrued portion of the early retirement benefit pursuant to 19-3-906 that would have been payable to the member commencing at age 50 if the member had not attained age 50 or earned 25 years of *membership service credit* at the time of death;

(2) if the deceased member had attained age 50 or earned 25 years of *membership service credit* at the time of death, the early retirement benefit that would have been payable to the member if the member had retired immediately prior to death; or

(3) if the deceased member had attained age 60 or earned 30 years of *membership service credit* at the time of death, the service retirement benefit that would have been payable to the member if the member had retired immediately prior to death.”

**Section 41.** Section 19-3-1210, MCA, is amended to read:

**“19-3-1210. Death payments to designated beneficiaries of retired members.** If a retired member dies without designating a contingent annuitant under 19-3-1501, the member’s designated beneficiary *or estate* must be paid the amount, if any, of the member’s accumulated contributions calculated as of the day of the member’s retirement minus the total of any retirement benefits already paid from the member’s account.”

**Section 42.** Section 19-3-1501, MCA, is amended to read:

**“19-3-1501. Optional forms of benefits — designation of contingent annuitant.** (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects must be converted, in lieu of all other benefits under this chapter, into an optional retirement benefit that is the actuarial equivalent of the original benefit. The optional retirement benefit is initially payable during the member’s or designated beneficiary’s lifetime, with a subsequent benefit to a contingent annuitant as follows:

(a) option 2—a continuation of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(b) option 3—a continuation of one-half of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) option 4—upon the initial payee’s death, other actuarially equivalent amounts payable to a contingent annuitant as may be approved by the board.

(2) The member or the designated beneficiary who elects an optional retirement benefit shall file a written application with the board prior to the first payment of the benefit. A contingent annuitant must be identified on the application.

(3) If a benefit recipient or the recipient’s contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(4) If a member dies after retirement and within 30 days from the date that the member’s written application electing or changing an election of an optional retirement benefit is received by the board, then the election is void.

(5) (a) Upon filing a written application with the board, a retired member who is receiving an optional retirement benefit that became effective before October 1, 1999, may designate a different contingent annuitant, select a different option, or convert the member's optional retirement benefit to a regular retirement benefit if:

(i) the original contingent annuitant has died; or

(ii) the member's marriage to the original contingent annuitant has been dissolved and the original contingent annuitant has ~~not been granted the~~ *no* right to receive the optional retirement benefit as part of ~~the dissolution settlement or~~ a family law order, *as defined in 19-2-907.*

(b) Upon receipt of the written application, the board shall actuarially adjust the member's monthly retirement benefit to reflect the change.

(6) (a) A retired member receiving an optional retirement benefit pursuant to subsection (1)(a) or (1)(b) that is initially effective on or after October 1, 1999, may file a written application with the board to have the optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement, *designate a different contingent annuitant, or select a different option* if:

(i) the contingent annuitant has died, in which case the optional benefit ~~must~~ *may* revert effective on the first day of the month following the contingent annuitant's death; or

(ii) the member's marriage to the contingent annuitant is dissolved and the beneficiary ~~was not granted the~~ *has no* right to receive the optional retirement benefit as part of ~~the dissolution settlement or~~ a family law order, in which case the benefit must revert effective on the first day of the month following receipt of the written application and verification that the ~~dissolution settlement or~~ family law order does not grant the optional benefit to the contingent annuitant.

(b) A regular retirement benefit provided pursuant to this subsection (6) must be increased by the ~~value~~ *amount* of any postretirement adjustments received by the member since the effective date of the member's retirement.

(7) A written application pursuant to subsection (5) or (6) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant."

**Section 43.** Section 19-3-2103, MCA, is amended to read:

**"19-3-2103. Legislative intent.** It is the intent of the legislature that, in implementing and administering the defined contribution plan:

(1) changes to current administrative processes and the impact of those changes on employers be minimized to the extent possible;

(2) the administrative structure for the plan be configured in an economical and efficient manner;

(3) administration and services for the plan be contracted out to the extent possible, but that the board provide for the diligent oversight of the contracts;

(4) reasonable ~~participant~~ *member* services be provided for and that fees be commensurate with the services;

(5) lines of communication and responsibilities be clearly established so that employers or their personnel and payroll officers do not advise members about plan choices or investment alternatives; and

(6) employers be encouraged to provide paid time for ~~employees~~ *members* to attend educational programs sponsored by the board pursuant to 19-3-112.”

**Section 44.** Section 19-3-2111, MCA, is amended to read:

**“19-3-2111. Plan membership — written election required — failure to elect — effect of election.** (1) Except as otherwise provided in this part:

(a) (i) a member who is an active member of the defined benefit plan on the date that the defined contribution plan becomes effective may, within 12 months after that date, elect to transfer to and become a member of the plan *regardless of whether the member remains active, becomes inactive, or terminates covered employment and plan membership within the 12-month period;*

(ii) a member who was an inactive member of the defined benefit plan on the date that the defined contribution plan becomes effective and who is rehired into covered employment after the plan effective date may, within 12 months after the member’s rehire date, elect to transfer to and become a member of the plan *regardless of whether the member remains active, becomes inactive, or terminates covered employment and plan membership within the 12-month period;*

(b) a member who is initially hired into covered employment on or after the date that the defined contribution plan becomes effective may, within 12 months of the member’s hire date, elect to become a member of the plan *regardless of whether the member remains active, becomes inactive, or terminates covered employment and plan membership within the 12-month period.*

(2) (a) Elections made pursuant to this section must be made on a form prescribed by the board.

(b) A member failing to make an election prescribed by this section remains a member of the defined benefit plan.

(c) An election under this section, including the default election pursuant to subsection (2)(b), is a one-time irrevocable election. Subject to 19-3-2113, this subsection (2)(c) does not prohibit a new election after ~~an employee~~ *a member* has terminated membership in either plan and returned to covered employment.

(3) A member in either the defined benefit plan or the defined contribution plan who becomes inactive after an election under this section and who returns to active membership remains in the plan previously elected.

(4) A system member may not simultaneously be a member of the defined benefit plan and the defined contribution plan and must be a member of either the defined benefit plan or the defined contribution plan. A period of service may not be credited in more than one retirement plan within the system.

(5) The provisions of this part do not prohibit the board from adopting rules to allow an employee to elect the defined contribution plan from the first day of covered employment.

(6) A member of the defined benefit plan who is subject to a family law order pursuant to 19-2-907 or an execution or income-withholding order pursuant to 19-2-909 may not transfer to the defined contribution plan unless the order is modified to apply under the defined contribution plan.

(7) (a) *A member of the defined benefit plan who is purchasing service credit through installment payments, either made directly to the board or pursuant to a payroll deduction agreement, may not transfer membership to the defined*

contribution plan unless the member first completes or terminates the contract for purchase of service credit.

(b) A member who files an election to transfer membership may make a lump-sum payment for up to the balance of the service credit remaining to be purchased prior to transferring, subject to the limitations of section 415 of the Internal Revenue Code. The lump-sum payment, unless made by a rollover pursuant to 19-2-708, must be made with after-tax dollars.

(c) If a member who files an election to transfer membership fails to complete or terminate the contract for purchase of service credit by the end of the member's 12-month election window, the board shall terminate the service purchase contract and credit the member with the prorated amount of service credit purchased under the contract."

**Section 45.** Section 19-3-2112, MCA, is amended to read:

**"19-3-2112. Plan choices for members employed by university system — amount available to transfer — effect on rights.** (1) If ~~an employee of~~ a member who is employed by the Montana university system is eligible to make an election under this part to transfer to the defined contribution plan, the employee may, instead of electing the defined contribution plan, elect to transfer membership to the university system's optional retirement program provided for under chapter 21 of this title.

(2) Except as otherwise provided in this part, an election to transfer *membership* to the optional retirement program must be made in accordance with the following provisions:

(a) (i) ~~A member employed by the university employee system~~ who is an active member of the defined benefit plan on the effective date of the defined contribution plan may, within 12 months after that date, elect to transfer to and become a member of the optional retirement program *regardless of whether the member remains active, becomes inactive, or terminates covered employment and plan membership within the 12-month period.*

(ii) A ~~university employee~~ member who was an inactive member of the defined benefit plan on the effective date of the defined contribution plan and who is hired or rehired into covered employment with the university system after that date may, within 12 months after the member's hire or rehire date, elect to transfer to and become a member of the optional retirement program *regardless of whether the member remains active, becomes inactive, or terminates covered employment and plan membership within the 12-month period.*

(iii) ~~An employee~~ A member who is initially hired into covered employment with the university system on or after the effective date of the defined contribution plan may, within 12 months of the member's hire date, elect to become a member of the optional retirement program *regardless of whether the member remains active, becomes inactive, or terminates covered employment and plan membership within the 12-month period.*

(b) Elections made pursuant to this section must be made on a form prescribed by the board.

(c) A member failing to make an election prescribed by this section remains a member of the defined benefit plan.

(d) An election under this section, including the default election pursuant to subsection (2)(c), is a one-time irrevocable election. Subject to 19-3-2113, this



subsection (2)(d) does not prohibit a new election after an employee has terminated membership in the optional retirement program and returned to employment in a position covered under the system.

(e) A member in either the defined benefit plan or the optional retirement program who becomes inactive after an election under this section and who returns to active membership remains in the plan previously elected.

(f) *Except as provided in subsection (2)(g), a university employee in a position covered under the system may not simultaneously be a member of more than one retirement plan under chapters 3 and 21 of this title, but must be a member of the defined benefit plan, the defined contribution plan, or the optional retirement program as provided by applicable provisions of this title. The same period of service may not be credited in more than one retirement system or plan.*

*(g) A university system employee who is or has been a member of the optional retirement program and returns to or accepts covered employment other than with the university system may make an election pursuant to 19-3-2111. That election is valid only for covered employment other than with the university system.*

~~(g)~~(h) The provisions of this part do not prohibit the board from adopting rules to allow an eligible employee to elect the optional retirement program from the first day of covered employment.

~~(h)~~(i) A member of the defined benefit plan who is subject to a family law order pursuant to 19-2-907 or an execution or income-withholding order pursuant to 19-2-909 may not transfer to the optional retirement program unless the order is modified to apply under the optional retirement program.

(j) (i) *A member of the defined benefit plan who is purchasing service credit through installment payments, either made directly to the board or pursuant to a payroll deduction agreement, may not transfer membership to the optional retirement program unless the member completes or terminates the contract for purchase of service credit.*

(ii) *A member who files an election to transfer membership may make a lump-sum payment for up to the balance of the service credit remaining to be purchased prior to transferring, subject to the limitations of section 415 of the Internal Revenue Code. The lump-sum payment, unless made by a rollover pursuant to 19-2-708, must be made with after-tax dollars.*

(iii) *If a member who files an election to transfer fails to complete or terminate the contract for purchase of service credit by the end of the member's 12-month election window, the board shall terminate the service purchase contract and credit the member with the prorated amount of service credit purchased under the contract.*

(3) For an employee electing to transfer *membership* to the optional retirement program, the board shall transfer to the optional retirement program the amount that the employee would have been able to transfer to the defined contribution plan under 19-3-2114.

(4) An election to become a member of the optional retirement program pursuant to this section is a waiver of all rights and benefits under the public employees' retirement system."

**Section 46.** Section 19-3-2113, MCA, is amended to read:

**“19-3-2113. Reinstatement of plan membership — purchase of prior service credit in defined benefit plan.** (1) (a) A ~~participant member~~ who terminates membership in the defined benefit plan, the defined contribution plan, or the optional retirement program after making an election pursuant to 19-3-2111 or 19-3-2112 and who returns to covered employment in less than 24 months shall become a member of the plan that the member last selected and is not eligible for a new plan choice election.

(b) A ~~participant member~~ who terminated membership in ~~either~~ the defined benefit plan, the defined contribution plan, or the optional retirement program after making an election pursuant to 19-3-2111 or 19-3-2112 and who returns to covered employment after 24 months or more is eligible to make a plan choice election as though initially hired as provided for in 19-3-2111(1)(b).

(2) (a) An employee who returns to covered employment after terminating membership in the defined benefit plan, who is eligible to make a plan choice, and who elects to join the defined benefit plan may reinstate prior membership service *and service credit* as provided in 19-2-603.

(b) An employee who returns to covered employment after terminating membership in the defined contribution plan or the optional retirement program, who is eligible to make a plan choice, and who elects to join the defined benefit plan may purchase prior membership service *and service credit* by paying to the board the full actuarial cost of the service credit as of the latest actuarial valuation of the defined benefit plan. The ~~employee member~~ may not purchase membership service *and service credit* under this section in excess of the ~~employee's member's~~ length of service ~~as a member of~~ in the defined contribution plan or the optional retirement program.”

**Section 47.** Section 19-3-2114, MCA, is amended to read:

**“19-3-2114. Amount available to transfer.** (1) (a) For an employee who was a system member on the day before the effective date of the defined contribution plan and who elects to transfer to the plan, the board shall transfer from the defined benefit plan to the member's retirement account the employee's contributions and the percentage of the employer's contributions specified in subsection (1)(b), plus 8% compounded annual interest on the total of the transferred employee and employer contributions.

(b) Based on the contribution amount historically available to pay unfunded liabilities in the defined benefit plan and the transferring member's years of *membership* service, the percentage of the employer contributions that may be transferred are as follows:

Years of <i>membership</i> service	Percentage of employer contributions available to transfer
Less than 5 years	65.53%
5 to 9 years	58.59%
10 to 14 years	55.26%
15 to 19 years	55.42%
20 or more years	57.53%

(2) For an employee hired on or after the effective date of the defined contribution plan who elects to become a member of the plan, the board shall transfer from the defined benefit plan to the member's retirement account an amount equal to the amount that would have been credited to the member's

account pursuant to 19-3-2117 had the employee become a plan member on the employee's hire date, plus 8% compounded annual interest."

**Section 48.** Section 19-3-2115, MCA, is amended to read:

**"19-3-2115. Transfers or rollovers into plan — service transfers — membership credit for purposes of vesting.** (1) (a) Except as provided in subsection (2), the board shall accept the rollover of contributions and the income on those contributions from another ~~qualified~~ *eligible retirement* plan to the member's vested account *as allowed under applicable federal law*.

(b) To transfer service *credit* from another retirement system in this title, an employee must be a member of the defined benefit plan. The member must receive membership service and service credit for the service the member transfers. The transferring member may, within 12 months after joining the defined benefit plan, elect to become a member of the defined contribution plan. The transferred service *credit* may be used for purposes of vesting in the defined contribution plan pursuant to 19-3-2116.

(2) ~~(a) After tax money may not be transferred or rolled over to a retirement account unless the money was contributed to the system's defined benefit plan on an after tax basis.~~

~~(b) To the extent that the transfer or rollover is disallowed under the Internal Revenue Code provisions in effect as of the calendar year immediately preceding the date of the transfer or rollover, a member may not transfer or rollover to a retirement account contributions made under sections 403(b) and 457 of the Internal Revenue Code. The board shall accept a direct rollover of eligible distributions from another eligible retirement plan only to the extent permitted by the Internal Revenue Code."~~

**Section 49.** Section 19-3-2116, MCA, is amended to read:

**"19-3-2116. Vesting — mandatory termination of membership — forfeitures.** (1) ~~A member is fully vested with member's contribution account includes~~ the member's contributions and the income on those contributions ~~and is vested from the date that the employee becomes a member of the plan, but is not considered a vested member unless the member meets the criteria under subsection (2).~~

~~(2) A member is not vested with member's employer contribution account includes~~ the employer's contributions and the income on those contributions ~~and does not attain the status of a vested member until is vested only when the member has a total of 5 years of membership service under the system.~~

~~(3) A member's account for other contributions includes the member's rollovers of contributions made pursuant to 19-3-2115 and income on those contributions and is vested from the date that the contribution is credited to the account.~~

~~(4) A member who terminates covered employment after becoming a vested member may terminate plan membership as provided in 19-3-2123.~~

~~(3)(5) A member who terminates covered employment before becoming a vested member shall terminate plan membership by removing from the plan the member's entire vested account balance as provided in 19-3-2123 and subject to 19-3-2126. The employer contributions and income on the employer's contributions in the member's retirement account are forfeited and must be allocated as provided in 19-3-2117.~~

(6) *If the member's employer contribution account is not vested upon termination of covered employment, the employer contributions and income are forfeited and must be allocated as provided in 19-3-2117.*"

**Section 50.** Section 19-3-2117, MCA, is amended to read:

**"19-3-2117. Allocation of contributions and forfeitures.** (1) Each plan member's retirement account must be credited with the ~~employee member~~ contributions made under 19-3-315.

(2) Subject to adjustment by the board as provided in 19-3-2121, beginning on the plan's effective date, of the employer contributions under 19-3-316, an amount equal to:

(a) 4.19% of compensation must be allocated to the member's retirement account;

(b) 2.37% of compensation must be allocated to the defined benefit plan as the plan choice rate; and

(c) 0.04% of compensation must be allocated to the education fund as provided in 19-3-112(1)(c).

(3) Subject to adjustment by the board pursuant to 19-3-2121(6) and beginning on the plan's effective date, of the employer contributions under 19-3-316, 0.3% of compensation must be allocated to the long-term disability plan trust fund established pursuant to 19-3-2141.

(4) Forfeitures of employer contributions and investment income on the employer contributions may not be used to increase a member's retirement account. The board shall allocate the forfeitures under 19-3-2116 to meet the plan's administrative expenses, including startup expenses."

**Section 51.** Section 19-3-2126, MCA, is amended to read:

**"19-3-2126. Refunds — minimum account balance — adjustment by rule.** (1) Before termination of service, a member may not receive a refund of any portion of the member's vested account *balance*.

(2) Except as provided in 19-3-2142, a ~~nonvested~~ member who terminates from service and whose vested account balance is less than \$200 must be paid the vested account balance in a lump sum. *If the member's employer contribution account is not vested, the employer contributions and income are forfeited and must be allocated as provided in 19-3-2117.* The payment must be made as soon as administratively feasible after the member's termination without a written application from the member.

(3) Except as provided in 19-3-2142, unless a written application is made pursuant to subsection (4)(a), a ~~nonvested~~ member who terminates from service and whose vested account balance is between \$200 and \$5,000 must be paid the vested account balance in a lump sum. The payment must be made as soon as administratively feasible after the member's termination. *If the member's employer contribution account is not vested, the employer contributions and income are forfeited and must be allocated as provided in 19-3-2117.*

(4) (a) Except as provided in 19-3-2142, upon the written application of a terminating member whose vested account balance is \$200 or more, the board shall make a direct rollover distribution pursuant to section 401(a)(31) of the Internal Revenue Code of the eligible portion of that balance. To receive the direct rollover distribution, the member is responsible for correctly designating,

on forms provided by the board, a *qualified* retirement plan that allows the rollover and is qualified under applicable federal law.

(b) The direct rollover distribution must be paid directly to the *qualified eligible* retirement plan.

~~(c) Except as provided in 19-3-2142, the amount of the member's vested account balance not eligible for a direct rollover distribution under subsection (4)(a) must be paid to the member in a lump sum.~~

(5) A member who terminates service with an account balance greater than \$5,000, whether vested or not, may remain in the plan.

~~(5)(6)~~ The board may by rule adjust the minimum account balance provided in this section as necessary to maintain reasonable administrative costs and to account for inflation."

**Section 52.** Section 19-3-2133, MCA, is amended to read:

**"19-3-2133. Creation of employee Employee investment advisory council.** The board shall, by August 1, 1999, create an employee investment advisory council. The advisory council shall meet at least ~~quarterly~~ *four times a year* to:

(1) advise the board concerning the ~~establishment and~~ operation of the defined contribution plan, including the selection of the initial investment alternatives to be provided pursuant to 19-3-2122;

(2) advise the board about negotiating, contracting, or modifying services for the state deferred compensation plan provided for in chapter 50; and

(3) review existing deferred compensation plans and to advise the board on the administration of the program."

**Section 53.** Section 19-3-2141, MCA, is amended to read:

**"19-3-2141. Long-term disability plan — benefit amount — eligibility — administration and rulemaking.** (1) (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 credit* is entitled to a disability benefit equal to one-fiftieth 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) 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) *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 ~~60~~ 65 years of age; ~~and~~

*(c) 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; and*

~~(c)(d)~~ the member ~~must~~ *shall* satisfy the other applicable requirements of this section and the board's rules adopted to implement this section.

(3) Application for a disability benefit must be made in accordance with 19-3-1005.

(4) 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.

(5) 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.

(6) 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.

(7) The board shall perform the duties, exercise the powers, and adopt reasonable rules to implement the provisions of this section."

**Section 54.** Section 19-5-101, MCA, is amended to read:

**"19-5-101. Definitions.** Unless a different meaning is plainly implied by the context, the following definitions apply in this chapter:

(1) "Compensation" means remuneration, as defined in 2-16-403, 3-5-211, and 3-7-222, paid to a member.

(2) "Current salary" means the current compensation for the office retired from.

(3) "Highest average compensation" means ~~the average of the~~ a member's highest *average* monthly compensation during any 36 consecutive months of membership service ~~in the retirement system~~.

(4) "Involuntary retirement" means a retirement not for cause and before retirement age.

(5) "Retired judge" means any judge or justice in receipt of a retirement benefit under this chapter."

**Section 55.** Section 19-5-301, MCA, is amended to read:

**"19-5-301. Membership — inactive vested members — inactive nonvested members.** (1) Except for a judge or justice who elected in writing to remain under the public employees' retirement system on or before October 1, 1985, a judge of a district court, a justice of the supreme court, and the chief water judge provided for in 3-7-221 must be members of the Montana judges' retirement system.

(2) A judge pro tempore is not eligible for active membership in the retirement system.

(3) A member with at least 5 years of membership service who terminates service and does not take a refund of the member's accumulated contributions is an inactive vested member and retains the right to purchase service *credit* and to receive a retirement benefit under the provisions of this chapter.

(4) A member with less than 5 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible for any benefits from the retirement system. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions."

**Section 56.** Section 19-5-409, MCA, is amended to read:

**“19-5-409. Application to purchase additional service.** (1) At any time before retirement, a member may file a written application with the board to purchase additional service credit for the purpose of calculating the member's retirement benefit. Except as provided in subsection (3), the member may purchase 1 year of additional service credit for every 5 years of membership service that the member has in the retirement system.

(2) For each year of service credit purchased under this section, a member shall contribute to the pension trust fund an amount equal to the actuarial cost of granting the service, based on the most recent actuarial valuation of the system as determined by the board.

(3) A member may not purchase more than 5 years of service *credit* under 19-2-707 and this section.

(4) Service *credit* purchased under this section is not membership service and may not be used to qualify a member for retirement or in the calculation of an actuarial reduction in benefits for a member who is not eligible for ~~normal~~ service retirement.”

**Section 57.** Section 19-5-501, MCA, is amended to read:

**“19-5-501. Eligibility for service retirement.** (1) A member who has at least 5 years of membership service and has reached the age of 60 has attained normal retirement age and may retire and receive the *service* retirement benefits provided in 19-5-502.

(2) Retirement benefits may not be approved by the board while the member is drawing full compensation as a judge or justice. However, benefits may not be withheld for receiving compensation as a judge pro tempore.”

**Section 58.** Section 19-5-502, MCA, is amended to read:

**“19-5-502. Service retirement benefit.** ~~Upon retirement~~ *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, 3 1/3% a year of the member's current salary for the first 15 years of ~~credited~~ *service credit* and 1.785% a year for each year of ~~credited~~ *service credit* after 15 years; or

(2) for members covered under 19-5-901, the benefit provided under subsection (1) except that the benefit must be calculated using highest average compensation.”

**Section 59.** Section 19-5-701, MCA, is amended to read:

**“19-5-701. Optional forms of benefits — designation of contingent annuitant.** (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects must be converted, in lieu of all other benefits under this chapter, into an optional retirement benefit that is the actuarial equivalent of the original benefit. The optional retirement benefit is initially payable during the member's or designated beneficiary's lifetime, with a subsequent benefit to a contingent annuitant as follows:

(a) option 2—a continuation of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(b) option 3—a continuation of one-half of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) option 4—upon the initial payee's death, other actuarially equivalent amounts payable to a contingent annuitant as may be approved by the board.

(2) The member or designated beneficiary who elects an optional retirement benefit shall file a written application with the board prior to the first payment of the benefit. A contingent annuitant must be identified on the application.

(3) If a benefit recipient or the recipient's contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(4) If the member dies after retirement and within 30 days from the date that the member's written application electing or changing an election of an optional retirement benefit is received by the board, the election is void.

(5) (a) A retired member receiving an optional retirement benefit pursuant to subsection (1)(a) or (1)(b) that is initially effective on or after October 1, 1999, may file a written application with the board to have the optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement if:

(i) the contingent annuitant has died, in which case the optional benefit must revert effective on the first day of the month following the contingent annuitant's death; or

(ii) the member's marriage to the contingent annuitant is dissolved and the beneficiary ~~was not granted the~~ *has no* right to receive the optional retirement benefit as part of the ~~dissolution settlement or~~ a family law order, *as defined in 19-2-907*, in which case the benefit must revert effective on the first day of the month following receipt of the written application and verification that the ~~dissolution settlement or~~ family law order does not grant the optional benefit to the contingent annuitant.

(b) A regular retirement benefit provided pursuant to this subsection (5) must be increased by the ~~value~~ *amount* of any postretirement adjustments received by the member since the effective date of the member's retirement.

(6) A written application pursuant to subsection (5) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant.

(7) (a) Upon filing a written application with the board, a retired member who is receiving an optional retirement benefit may designate a different contingent annuitant, select a different option, or convert the member's optional retirement benefit to a regular retirement benefit if:

(i) the original contingent annuitant has died; or

(ii) the member has been divorced from the original contingent annuitant and the original contingent annuitant has ~~not been granted the~~ *no* right to receive the optional retirement benefit as part of the ~~divorce settlement~~ *a family law order*.

(b) Upon receipt of the written application, the board shall actuarially adjust the member's monthly retirement benefit to reflect the change."

**Section 60.** 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 ~~for services to a member~~ *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 the member has taken compensatory leave, sick leave, annual leave, or a leave of absence before any pretax deductions allowed by the Internal Revenue Code have been state or federal law are made, and exclusive of

(b) Compensation does not include maintenance, allowances, and expenses.

(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) "Highest average compensation" means ~~the~~ a member's highest average monthly compensation received by a member for during any ~~3 years of continuous service upon which contributions have been made~~ 36 consecutive months of membership service or, in the event a member has not served 3 years at least 36 months, the total compensation earned divided by the number of months served of service Lump-sum payments for severance pay, including payment for compensatory leave, sick leave, and annual leave, paid to an employee the member upon termination of service 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.

(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 61.** Section 19-6-401, MCA, is amended to read:

**"19-6-401. Payments into pension trust fund.** All appropriations made by the state, all contributions by members, in the amount specified, all interest on and increase of the investments and money under this pension trust fund, all fees or portions of fees that are required by law to be paid to the retirement system or trust fund, and a portion of the fees from driver's licenses and duplicate driver's licenses as provided in 61-5-121 must be paid to deposited in the pension trust fund."

**Section 62.** Section 19-6-502, MCA, is amended to read:

**"19-6-502. Service retirement benefit.** ~~Upon retirement~~ After termination from service and upon application for service retirement, a member must receive a service retirement benefit equal to 2.5% of the member's highest average compensation for each year of service credit."

**Section 63.** Section 19-6-503, MCA, is amended to read:

**"19-6-503. Early retirement benefit for member discontinued from service other than for cause.** If a member is discontinued from service other than for cause after having completed 5 years of membership service but before reaching normal retirement age, the member must, upon filing a written application with the board, be paid an early service retirement benefit that is of actuarial equivalent value to a service retirement based on a retirement age of 60."

**Section 64.** Section 19-6-601, MCA, is amended to read:

**“19-6-601. Disability retirement benefit.** (1) ~~In the case of the disability of a member, who becomes disabled must be granted a disability retirement benefit must be granted the member that is the actuarial equivalent of the service retirement benefit under 19-6-502 standing to the member's credit at the time of the member's disability retirement. If the disability is~~

(2) ~~A member who becomes disabled as a direct result of any the member's service to the Montana highway patrol in the line of duty, then the member who is disabled must be retired on a disability retirement benefit of one half the member's highest average compensation regardless of the member's length of service.:~~

(a) ~~before completing 20 years of membership service must receive a disability retirement benefit equal to one-half the member's highest average compensation; or~~

(b) ~~after completing 20 years or more of membership service must receive a disability retirement benefit equal to 2.5% of the member's highest average compensation for each year of service credit.~~

~~(2)(3) Upon the death of a retired member receiving a disability retirement benefit as provided in subsection (1) under this section, the benefit must be paid to the member's surviving spouse or dependent child, if there is a spouse or child, in the same manner is eligible for benefits as provided for in 19-6-505(2) and (3).”~~

**Section 65.** Section 19-6-709, MCA, is amended to read:

**“19-6-709. (Temporary) Supplemental benefits for certain retirees.**

(1) In addition to any retirement benefit payable under this chapter, a retired member or a survivor determined by the board to be eligible under subsection (2) must receive an annual lump-sum benefit payment beginning in September 1991 and each succeeding year as long as the member remains eligible.

(2) To be eligible for the benefits under this section, a person must be receiving a monthly benefit before July 1, 1991, may not be covered by 19-6-710, and must be:

(a) a retired member who is 55 years of age or older and who has been receiving a service retirement benefit for at least 5 years prior to the date of distribution;

(b) a survivor of a member who would have been eligible under subsection (2)(a); or

(c) a recipient of a disability benefit under 19-6-601 or a survivorship benefit under 19-6-901.

(3) A retired member otherwise qualified under this section who is employed in a position covered by a retirement system under Title 19 is ineligible to receive any lump-sum benefit payments provided for in this section until the member's service in the covered position is terminated. Upon termination of the member's covered service, the retired member becomes eligible in the next fiscal year succeeding the member's termination.

(4) ~~The lump-sum payment amount of fees transferred to the pension trust fund pursuant to 15-1-122(3)(e), 61-3-527(4)(b), and 61-3-562(1)(b) must be distributed proportionally as a lump-sum benefit payment to all each eligible recipients recipient based on service credit at the time of retirement, subject to the following:~~

(a) a recipient under subsection (2)(c) is considered to have 20 years of service *credit* for the purposes of the distributions;

(b) any recipient of a ~~service~~ retirement benefit exceeding the maximum monthly benefit under 19-6-707(2)(a) must have the recipient's service credit reduced 25% for the purposes of the distributions;

(c) the maximum annual increase in the amount of supplemental benefits paid to each individual under this section is the percentage increase for the previous calendar year in the annual average consumer price index for urban wage earners and workers, compiled by the bureau of labor statistics of the United States department of labor or its successor agency. (Terminates upon death of last eligible recipient—sec. 1, Ch. 567, L. 1991.)”

**Section 66.** Section 19-6-801, MCA, is amended to read:

**“19-6-801. Application to purchase military service.** (1) (a) Except as otherwise provided in ~~this section subsection (1)(b)~~ and subject to 19-6-805, a member with at least 15 years of service credit may, at any time prior to retirement, file a written application with the board to purchase *service credit and membership service* for up to 5 years of the member's active service in the armed forces of the United States ~~for the purpose of calculating retirement benefits.~~

~~(2) To purchase this military service:~~

~~(a) a member who is not covered by 19-6-710 shall contribute the amount determined by the board to be due based on the member's compensation and regular contribution rate in the member's 16th year for the 1st year purchased and, for each subsequent year purchased, an amount based on the member's compensation and contribution rate in each of as many years succeeding the member's 16th year as are required to complete the purchase, with regular interest from the date the member becomes eligible for this benefit to the date the purchase is complete. The member may not purchase more military service under this subsection (2)(a) than the member has service credit in excess of 15 years.~~

~~(b) a member who is covered by 19-6-710 shall pay the actuarial cost of the member's military service, based on the system's most recent actuarial valuation.~~

~~(3)(b) A member is not eligible to purchase *active military service credit and membership service* under ~~this section subsection (1)(a)~~ if the member:~~

~~(a)(i) has retired from active duty in the armed forces of the United States with military retirement benefits based on that military service;~~

~~(b)(ii) is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or~~

~~(c)(iii) is eligible to receive credit for that service in any other retirement system or plan.~~

(2) (a) Except as provided in subsection (2)(b) and subject to 19-6-805, a member with at least 15 years of service credit may, at any time prior to retirement, file a written application with the board to purchase *service credit and membership service* for up to 5 years of the member's reserve military service in the armed forces of the United States.

(b) A member is not eligible to purchase reserve military service credit and membership service under subsection (2)(a) if the member is eligible, pursuant to 19-2-707, to receive credit in the system for that service.

(3) To purchase service credit and membership service under this section:

(a) a member who is not covered by 19-6-710 shall contribute the amount determined by the board to be due based on the member's compensation and regular contribution rate in the member's 16th year for the 1st year purchased and, for each subsequent year purchased, an amount based on the member's compensation and contribution rate in each of as many years succeeding the member's 16th year as are required to complete the purchase, with regular interest from the date the member becomes eligible for this benefit to the date the purchase is complete. The combined total of active and reserve military service credit and membership service that a member may purchase may be no more than the member's service credit in excess of 15 years or 5 years, whichever is less.

(b) a member who is covered by 19-6-710 shall pay the actuarial cost of the member's active or reserve military service credit based on the system's most recent actuarial valuation."

**Section 67.** Section 19-6-803, MCA, is amended to read:

**"19-6-803. Application to purchase law enforcement service performed in another state.** (1) Subject to 19-6-805, a member with at least 5 years of *membership* service ~~credit~~ may, at any time before retirement, file a written application with the board to purchase 1 year of out-of-state law enforcement employment for each year of service credit, unless the member is eligible to receive a retirement benefit in another system or plan for that same service.

(2) To purchase this service *credit*, a member shall pay the actuarial cost of the service *credit* in the retirement system, as determined by the board, based on:

(a) the member's compensation for the 12 months immediately preceding the date of the member's election to ~~cover~~ purchase the service *credit* under the retirement system; and

(b) the actuarial rate in effect at the time of purchase of service *credit*.

(3) Service *credit* purchased under this section may not be used to qualify a member to purchase military service *credit* under 19-6-801.

(4) Service *credit* purchased under this section may not be used in calculating a member's retirement benefit unless the last 5 years of service credit were earned under the retirement system. If, upon retirement, a member's purchased service *credit* may not be used in calculating the member's retirement benefit, the member must receive a refund of the amount paid by the member to purchase the service *credit*, plus regular interest on that amount."

**Section 68.** Section 19-6-804, MCA, is amended to read:

**"19-6-804. Application to purchase additional service.** (1) Subject to 19-6-805, a member with at least 5 years of membership service may, at any time before retirement, file a written application with the board to purchase 1 year of additional service credit for each 5 years of membership service that the member has in the retirement system.

(2) To purchase service *credit* under this section, a member shall pay the actuarial cost of the service *credit*, based on the system's most recent actuarial valuation as determined by the board.

(3) Service *credit* purchased under this section is not membership service and may not be used to qualify a member for retirement or in the calculation of an actuarial reduction in benefits for a member who is not eligible for ~~normal~~ service retirement."

**Section 69.** Section 19-6-805, MCA, is amended to read:

**"19-6-805. Service purchase limitation.** A member may not purchase more than a combined total of 5 years of service *credit* under 19-6-801, 19-6-803, and 19-6-804."

**Section 70.** 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 ~~for services to a member out of~~ 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 the Internal Revenue Code state or federal law are made and exclusive of.~~

(b) *Compensation does not include* maintenance, allowances, and expenses.

(2) "Highest average compensation" means ~~the a member's highest average monthly compensation received by a member for during any 3 years 36 consecutive months of continuous service from which contributions were deducted membership service or, in the event that a member has not served 3 years at least 36 months, the total compensation earned divided by the number of months served of service.~~ Lump-sum payments for severance pay, including payment for compensatory leave, sick leave, and annual leave, paid to ~~an employee 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.

(3) "Investigator" means a person who is employed as a criminal investigator or as a gambling investigator for the department of justice.

(4) "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 71.** Section 19-7-301, MCA, is amended to read:

**"19-7-301. Membership — inactive vested members — inactive nonvested members.** (1) (a) Except as provided in subsection (1)(b), each sheriff shall become a member of the sheriffs' retirement system.

(b) A sheriff who was a member of the public employees' retirement system on July 1, 1974, may remain a public employees' retirement system member or elect to become a member of the sheriffs' retirement system by filing a written election with the board at any time before retirement.

(2) (a) Except as provided in subsection (2)(b), an investigator ~~must~~ shall become a member of the sheriffs' retirement system.

(b) An investigator who was a member of the public employees' retirement system on July 1, 1993, may remain in the public employees' retirement system or elect to become a member of the sheriffs' retirement system by filing a written election with the board at any time before retirement.

(3) A member of the public employees' retirement system who begins employment in a position covered by the sheriffs' retirement system may remain in the public employees' retirement system or may elect to become a member of the sheriffs' retirement system by filing a written election with the board no later than 30 days after beginning the employment.

(4) A sheriff or investigator who elects to become a member of the sheriffs' retirement system must be an active member as long as actively employed in an eligible capacity, except as provided in 19-7-1101(2).

(5) A member with at least 5 years of membership service who terminates service and does not take a refund of the member's accumulated contributions is an inactive vested member and retains the right to purchase service *credit* and to receive a retirement benefit under the provisions of this chapter.

(6) A member with less than 5 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible for any benefits from the retirement system. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions."

**Section 72.** Section 19-7-312, MCA, is amended to read:

**"19-7-312. Transfer of membership — ~~qualification purchase of previous service.~~** A person who elects to become a member of the sheriffs' retirement system pursuant to 19-7-301 may transfer the member's ~~creditable~~ service *credit* in the public employees' retirement system into the sheriffs' retirement system under the provisions of ~~19-7-302 [section 1].~~"

**Section 73.** Section 19-7-502, MCA, is amended to read:

**"19-7-502. Early retirement ~~Retirement option.~~** A member with at least 5 ~~but less than 20~~ years of membership service ~~and who has not met the minimum eligibility requirements for service retirement~~ may retire with an ~~early~~ retirement benefit commencing no sooner than the first day of the month following the member's 50th birthday. The ~~early~~ retirement benefit must be calculated to be the actuarial equivalent of the member's *service* retirement benefit as otherwise accrued, based upon payment commencing when the member would have completed 20 years of membership service or reached age 60, whichever event would have occurred first."

**Section 74.** Section 19-7-601, MCA, is amended to read:

**"19-7-601. Disability retirement benefit.** (1) ~~In the case of the disability of a member, regardless of the member's length of service, A member who becomes disabled must be granted a disability retirement benefit must be awarded to the member based on that is the actuarial equivalent of the member's service retirement benefit under 19-7-503 standing to the member's credit at the time of the member's disability retirement. If the disability is~~

(2) ~~A member who becomes disabled as a direct result of the member's service as a member in the line of duty, then the member must be awarded a benefit of one half of the member's highest average compensation.~~

(a) before completing 20 years of membership service must receive a disability retirement benefit equal to one-half the member's highest average compensation; or

(b) after completing 20 years or more of membership service must receive a disability retirement benefit equal to 2.5% of the member's highest average compensation for each year of service credit."

**Section 75.** Section 19-7-801, MCA, is amended to read:

**"19-7-801. Membership in municipal police officers' retirement system prior to or following city-county consolidation — payment of benefits by two systems.** (1) A law enforcement officer who has not changed employment but who has, because of a city-county consolidation, been transferred either from a city police force to a county sheriff's department or from a county sheriff's department to a city police force as a law enforcement officer is eligible for a service retirement benefit if the officer's combined service credit in the sheriffs' retirement system and the municipal police officers' retirement system satisfies the minimum membership service requirement of the system to which the officer last made contributions. A member who has elected to continue membership in the public employees' retirement system under 19-7-301 may continue the election. However, credit for service in the public employees' retirement system that has not been transferred prior to January 1, 1979, may not be transferred.

(2) A member of the municipal police officers' retirement system who begins employment in a position covered by the sheriffs' retirement system following a city-county consolidation may remain in the municipal police officers' retirement system or elect to become a member of the sheriffs' retirement system by filing a written election with the board no later than 30 days after beginning the employment.

(3) Eligibility for and calculation of disability retirement, death benefits, and refund of contributions are governed by the provisions of the retirement system to which the officer last made contributions.

(4) The service retirement benefit of a member described in subsection (1) must be calculated separately for each system based on the service ~~credited~~ credit under each system. The calculation for the sheriffs' retirement system portion of the benefit must include the appropriate reduction in the retirement benefit for an optional retirement benefit elected under 19-7-1001. The final salary or highest average compensation for each calculation must be based on the highest compensation earned while a member of either system. Each system shall pay its proportionate share, based on the number of years of service ~~credited~~ credit, of the combined benefit.

(5) Upon the death of a retired member receiving a service retirement benefit under this section, the survivor or contingent annuitant and the continuing benefit must be determined separately for each system as follows:

(a) For the municipal police officers' retirement system portion of the benefit, the surviving spouse must receive a benefit equal to the municipal police officers' retirement system portion of the service retirement benefit as calculated at the time of the member's retirement. If the retired member leaves no surviving spouse or upon the death of the surviving spouse, the retired member's surviving dependent child, or children collectively if there are more than one, must receive the same monthly benefits that a surviving spouse would receive for as long as the child or one of the children remains dependent, as

defined in 19-9-104. The benefits must be made to the child's appointed guardian for the child's use. If there is more than one dependent child, upon each child no longer qualifying as dependent under 19-9-104, the pro rata benefits to that child must cease and be paid to the remaining children until all the children are no longer dependent.

(b) For the sheriffs' retirement system portion of the benefit:

(i) the contingent annuitant must receive a continuing benefit as determined under 19-7-1001, if the retired member elected an optional retirement benefit; or

(ii) if the retired member did not elect an optional retirement benefit, any payment owed the retired member, including the excess, if any, of the retired member's accumulated contributions standing to the retired member's credit at the time of retirement less payments made to the retired member must be paid to the retired member's designated beneficiary."

**Section 76.** Section 19-7-803, MCA, is amended to read:

**"19-7-803. Application to purchase military service.** (1) (a) Except as otherwise provided in ~~this section subsection (1)(b)~~ and subject to 19-7-805, a member with at least 15 years of service credit may, at any time prior to retirement, file a written application with the board to purchase *service credit and membership service* for up to 5 years of the member's active service in the armed forces of the United States ~~for the purpose of calculating retirement benefits.~~

~~(2) To purchase this military service, the member shall pay the actuarial cost of the member's military service, based on the system's most recent actuarial valuation.~~

~~(3)(b)~~ A member is not eligible to purchase *active military service credit and membership service* under ~~this section subsection (1)(a)~~ if the member:

~~(a)(i)~~ has retired from active duty in the armed forces of the United States with military retirement benefits based on that military service;

~~(b)(ii)~~ is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

~~(c)(iii)~~ is eligible to receive credit for that service in any other retirement system or plan.

(2) (a) Except as provided in subsection (2)(b) and subject to 19-7-805, a member with at least 15 years of service credit may, at any time prior to retirement, file a written application with the board to purchase *service credit and membership service* for up to 5 years of the member's reserve military service in the armed forces of the United States.

(b) A member is not eligible to purchase *reserve military service credit and membership service* under subsection (2)(a) if the member is eligible, pursuant to 19-2-707, to receive credit in the system for that service.

(3) To purchase *service credit and membership service* under this section, the member shall pay the actuarial cost of the member's active or reserve military service credit based on the system's most recent actuarial valuation.

(4) Military service credit and membership service purchased under ~~this section subsection (1) or (2)~~ is not membership service and may not be used in determining the member's eligibility for a service retirement benefit."

**Section 77.** Section 19-7-804, MCA, is amended to read:



**“19-7-804. Application to purchase additional service.** (1) Subject to 19-7-805, a member with at least 5 years of membership service may, at any time before retirement, file a written application with the board to purchase 1 additional year of service credit for each 5 years of membership service.

(2) To purchase service *credit* under this section, a member shall pay the actuarial cost of the service *credit* in the sheriffs' retirement system, as determined by the board, based on the system's most recent actuarial valuation.

(3) Service *credit* purchased under this section may not be used to qualify a member for the purchase of military service under 19-7-803.

(4) Service *credit* purchased under this section must be credited for the purpose of meeting retirement eligibility and for calculating retirement benefits.”

**Section 78.** Section 19-7-805, MCA, is amended to read:

**“19-7-805. Service purchase limitation.** A member may not purchase a combined total of more than 5 years of service *credit* under 19-7-803 and 19-7-804.”

**Section 79.** Section 19-7-1001, MCA, is amended to read:

**“19-7-1001. Optional forms of benefits — designation of contingent annuitant.** (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects must be converted, in lieu of all other benefits under this chapter, into an optional retirement benefit that is the actuarial equivalent of the original benefit. The optional retirement benefit is initially payable during the member's or designated beneficiary's lifetime with a subsequent benefit to a contingent annuitant, as follows:

(a) option 2—a continuation of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(b) option 3—a continuation of one-half of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) option 4—upon the initial payee's death, other actuarially equivalent amounts payable to a contingent annuitant as may be approved by the board.

(2) The member or the designated beneficiary who elects an optional retirement benefit shall file a written application with the board prior to the first payment of the benefit. A contingent annuitant must be identified on the application.

(3) If a benefit recipient or the recipient's contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(4) If the member dies after retirement and within 30 days from the date that the member's written application electing or changing an election of an optional retirement benefit is received by the board, the election is void.

(5) (a) A retired member receiving an optional retirement benefit pursuant to subsection (1)(a) or (1)(b) that is initially effective on or after October 1, 1999, may file a written application with the board to have the optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement if:

(i) the contingent annuitant has died, in which case the optional benefit must revert effective on the first day of the month following the contingent annuitant's death; or

(ii) the member's marriage to the contingent annuitant is dissolved and the beneficiary ~~was not granted the~~ *has no* right to receive the optional retirement benefit as part of the ~~dissolution settlement or~~ a family law order, *as defined in 19-2-907*, in which case the benefit must revert effective on the first day of the month following receipt of the written application and verification that the ~~dissolution settlement or~~ family law order does not grant the optional benefit to the contingent annuitant.

(b) A regular retirement benefit provided pursuant to this subsection (5) must be increased by the ~~value~~ *amount* of any postretirement adjustments received by the member since the effective date of the member's retirement.

(6) A written application pursuant to subsection (5) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant.

(7) (a) Upon filing a written application with the board, a retired member who is receiving an optional retirement benefit may designate a different contingent annuitant, select a different option, or convert the member's optional retirement benefit to a regular retirement benefit if:

(i) the original contingent annuitant has died; or

(ii) the member has been divorced from the original contingent annuitant and the original contingent annuitant has ~~not been granted the~~ *no* right to receive the optional retirement benefit as part of the ~~divorce settlement or~~ *a family law order*.

(b) Upon receipt of the written application, the board shall actuarially adjust the member's monthly retirement benefit to reflect the change."

**Section 80.** 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 ~~for services to a member out of~~ *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 ~~the Internal Revenue Code~~ *state or federal law* are made ~~and exclusive of~~.

(b) *Compensation does not include* maintenance, allowances, and expenses.

(2) "Highest average compensation" means ~~the~~ *a member's* highest average monthly compensation ~~received by a member for~~ *during any 3 years* ~~36 consecutive months of continuous service upon which contributions were made~~ *membership service* or, in the event a member has not served ~~3 years~~ *at least 36 months*, the total compensation earned divided by the number of months ~~served~~ *of service*. Lump-sum payments for severance pay, including payment for compensatory leave, sick leave, and annual leave, paid to ~~an employee~~ *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.

(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 appointed as a peace officer pursuant to 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 81.** Section 19-8-301, MCA, is amended to read:

**"19-8-301. Membership — inactive vested members — inactive nonvested members.** (1) Except as provided in 19-8-302, the following state peace officers must be covered under the game wardens' and peace officers' retirement system and, beginning on the first day of employment, shall become and remain active members for as long as they are employed as peace officers:

(a) game wardens who are assigned to law enforcement in the department of fish, wildlife, and parks;

(b) motor carrier officers employed by the department of transportation;

(c) campus security officers employed by the university system;

(d) wardens and deputy wardens employed by the department of corrections;

(e) corrections officers employed by the department of corrections;

(f) probation and parole officers employed by the department of corrections;

(g) stock inspectors and detectives employed by the department of livestock;

(h) motor vehicle inspectors employed by the department of justice; and

(i) drill instructors employed by the department of corrections.

(2) A member with at least 5 years of membership service who terminates service and does not take a refund of the member's accumulated contributions is an inactive vested member and retains the right to purchase service *credit* and to receive a retirement benefit under the provisions of this chapter.

(3) A member with less than 5 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible for any benefits from the retirement system. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions."

**Section 82.** Section 19-8-302, MCA, is amended to read:

**"19-8-302. Public employees' retirement system — transfer of membership.** (1) Except as provided in subsections (2) and (4), an eligible peace officer shall become a member of the game wardens' and peace officers' retirement system on the first day of ~~covered~~ service.

(2) A member of the public employees' retirement system who first becomes eligible for membership in the game wardens' and peace officers' retirement system on July 1, 1997, may elect to become a member of the retirement system or may continue membership in the public employees' retirement system by

filing a written election that must be received by the board no later than December 31, 2001.

(3) A person who is a member of the game wardens' and peace officers' retirement system assigned to law enforcement who transfers to a position involving duties other than law enforcement within the same state agency may retain membership in the retirement system by filing a written election with the board no later than 30 days after transfer to the new position.

(4) A person who is a member of the public employees' retirement system who transfers to a position covered by the game wardens' and peace officers' retirement system may elect to become a member of the retirement system or may continue membership in the public employees' retirement system by filing a written election with the board no later than 30 days after transfer to the new position."

**Section 83.** Section 19-8-308, MCA, is amended to read:

**"19-8-308. Transfer of service.** A person who elects to become a member of the game wardens' and peace officers' retirement system pursuant to 19-8-302 may transfer the member's service *credit* in the public employees' retirement system into the game wardens' and peace officers' retirement system under the provisions of ~~19-8-902~~ [section 1]."

**Section 84.** Section 19-8-604, MCA, is amended to read:

**"19-8-604. Early retirement benefit.** If a member is discontinued from service after having completed 5 years of membership service but before reaching *normal* retirement age, the member must, upon filing a written application with the board, be paid a *service* retirement benefit beginning on the member's 55th birthday calculated under the provisions of 19-8-603."

**Section 85.** Section 19-8-701, MCA, is amended to read:

**"19-8-701. Disability retirement benefit.** (1) A member who ~~is determined by the board to be~~ *becomes* disabled must be granted a disability retirement benefit ~~in an amount calculated on~~ *that is* the actuarial equivalent of the service retirement benefit ~~under 19-8-603~~ standing to the member's credit at the time of the member's disability retirement.

(2) ~~If the disability is~~ *A member who has at least 5 years of membership service and who becomes disabled as a direct result of any the member's service to the state in the line of duty and the member has at least 5 years of membership service, the member who is disabled must be retired on a disability retirement benefit of not less than one-half of the member's highest average compensation:*

*(a) before completing 20 years of membership service must receive a disability retirement benefit equal to one-half the member's highest average compensation; or*

*(b) after completing 20 years or more of membership service must receive a disability retirement benefit equal to 2.5% of the member's highest average compensation for each year of service credit."*

**Section 86.** Section 19-8-801, MCA, is amended to read:

**"19-8-801. Optional forms of benefits — designation of contingent annuitant.** (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects must, in lieu of all other benefits under this chapter, be converted into an optional retirement benefit that is the

actuarial equivalent of the original benefit. The optional retirement benefit is initially payable during the member's or designated beneficiary's lifetime with a subsequent benefit to a contingent annuitant as follows:

(a) option 2—a continuation of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(b) option 3—a continuation of one-half of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) option 4—upon the initial payee's death, other actuarially equivalent amounts payable to a contingent annuitant as may be approved by the board.

(2) The member or the designated beneficiary who elects an optional retirement benefit shall file a written application with the board prior to the first payment of the benefit. A contingent annuitant must be identified on the application.

(3) If a benefit recipient or the recipient's contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(4) If the member dies after retirement and within 30 days from the date that the member's written application electing or changing an election of an optional retirement benefit is received by the board, the election is void.

(5) (a) A retired member receiving an optional retirement benefit pursuant to subsection (1)(a) or (1)(b) that is initially effective on or after October 1, 1999, may file a written application with the board to have the optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement if:

(i) the contingent annuitant has died, in which case the optional benefit must revert effective on the first day of the month following the contingent annuitant's death; or

(ii) the member's marriage to the contingent annuitant is dissolved and the beneficiary ~~was not granted the~~ *has no* right to receive the optional retirement benefit as part of the ~~dissolution settlement or a family law order, as defined in 19-2-907,~~ in which case the benefit must revert effective on the first day of the month following receipt of the written application and verification that the ~~dissolution settlement or family law order does not grant the optional benefit to the contingent annuitant.~~

(b) A regular retirement benefit provided pursuant to this subsection (5) must be increased by the ~~value~~ *amount* of any postretirement adjustments received by the member since the effective date of the member's retirement.

(6) A written application pursuant to subsection (5) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant.

(7) (a) Upon filing a written application with the board, a retired member who is receiving an optional retirement benefit may designate a different contingent annuitant, select a different option, or convert the member's optional retirement benefit to a regular retirement benefit if:

(i) the original contingent annuitant has died; or

(ii) the member has been divorced from the original contingent annuitant and the original contingent annuitant has not been granted the right to receive the optional retirement benefit as part of ~~the divorce settlement~~ *a family law order*.

(b) Upon receipt of the written application, the board shall actuarially adjust the member's monthly retirement benefit to reflect the change."

**Section 87.** Section 19-8-901, MCA, is amended to read:

**"19-8-901. Application to purchase military service.** (1) (a) Except as ~~otherwise provided in this section subsection (1)(b)~~ and subject to 19-8-906, a member with at least 15 years of service credit may, at any time prior to retirement, file a written application with the board to purchase *service credit and membership service* for up to 5 years of the member's active service in the armed forces of the United States ~~for the purpose of calculating retirement benefits~~.

~~(b) To purchase this military service, the member shall pay the actuarial cost of the member's military service, based on the system's most recent actuarial valuation as determined by the board.~~

~~(2)(b)~~ A member is not eligible to purchase *active military service credit and membership service* under ~~this section subsection (1)(a)~~ if the member:

~~(a)(i)~~ has retired from active duty in the armed forces of the United States with military retirement benefits based on that military service;

~~(b)(ii)~~ is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

~~(c)(iii)~~ is eligible to receive credit for that service in any other retirement system or plan.

(2) (a) *Except as provided in subsection (2)(b) and subject to 19-8-906, a member with at least 15 years of service credit may, at any time prior to retirement, file a written application with the board to purchase service credit and membership service for up to 5 years of the member's reserve military service in the armed forces of the United States.*

(b) *A member is not eligible to purchase reserve military service credit and membership service under subsection (2)(a) if the member is eligible, pursuant to 19-2-707, to receive credit in the system for that service.*

(3) *To purchase service credit and membership service under this section, the member shall pay the actuarial cost of the member's active or reserve military service based on the system's most recent actuarial valuation."*

**Section 88.** Section 19-8-904, MCA, is amended to read:

**"19-8-904. Application to purchase additional service.** (1) Subject to 19-8-906, a member with at least 5 years of membership service, may, at any time before retirement, file a written application with the board to purchase 1 year of additional service credit for each 5 years of membership service that the member has qualified in the retirement system.

(2) To purchase *service credit* under this section, a member shall pay the actuarial cost of the *service credit*, based on the system's most recent actuarial valuation as determined by the board.

(3) *Service credit* purchased under this section is not membership service and may not be used to qualify a member for retirement or in the calculation of

an actuarial reduction in benefits for a member who is not eligible for ~~normal~~ service retirement.”

**Section 89.** Section 19-8-905, MCA, is amended to read:

**“19-8-905. Absence due to injury or illness.** (1) Time, not to exceed 5 years, during which a member is absent because of an injury or illness is considered membership service if, within 1 year after the end of the absence, the injury or illness is determined to have arisen out of and in the course of the member’s employment. However, the member may not earn service ~~credits~~ *credit* for the absence unless the member complies with subsections (2) and (3), in which case the absence is considered as time spent in service for both service ~~credits~~ *credit* and membership service.

(2) (a) A member absent because of an employment-related injury entitling the member to workers’ compensation payments may, upon the member’s return to service, contribute an amount equal to the contributions that the member would have made on the basis of the member’s compensation at the commencement of the member’s absence plus regular interest accruing from 1 year from the date after the member returns to ~~covered~~ service to the date the member contributes for the period of absence.

(b) Whenever a member elects to contribute under subsection (2)(a), the employer shall contribute employer contributions for the period of absence based on the salary as calculated in subsection (2)(a) and may pay interest on the employer’s contribution calculated in the same manner as interest on the employee’s contribution under subsection (2)(a). An employer electing to make an interest payment shall do so for all employees similarly situated. If the employer elects not to pay the interest costs, this amount must be paid by the employee.

(3) At some time after returning to ~~covered~~ service, a member shall file with the board a written notice of the member’s intent to pay the contributions under subsection (2).

(4) A member loses the right to contribute for an absence under this section if all of the member’s accumulated contributions are refunded pursuant to 19-2-602 or for the period of time during which benefits are received if the member retires during the absence.”

**Section 90.** Section 19-8-906, MCA, is amended to read:

**“19-8-906. Service purchase limitation.** A member may not purchase more than a combined total of 5 years of service *credit* under 19-8-901 and 19-8-904.”

**Section 91.** Section 19-9-104, MCA, is amended to read:

**“19-9-104. Definitions.** Unless the context requires otherwise, the following definitions apply in this chapter:

(1) (a) “Compensation” means the remuneration, ~~excluding overtime, holiday payments, shift differential payments, compensation time payments, and payments in lieu of sick leave and annual leave, paid for services to a member out of~~ from funds controlled by an employer *in payment for the member’s services* before any pretax deductions allowed by the Internal Revenue Code ~~have been~~ state or federal law are made.

(b) *Compensation does not include:*

(i) *overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave and annual leave; and*

(ii) *maintenance, allowances, and expenses.*

(2) "Dependent child" means a child of a deceased member:

(a) who is unmarried and under 18 years of age; or

(b) who is 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.

(3) "Employer" means any city that participated in a prior plan or that elects to join this retirement system under 19-9-207.

(4) "Final average compensation" means the monthly compensation of a member, averaged over the last 36 months of the member's service or, in the event a member has not been a member that long, over the period of membership served at least 36 months, the total compensation earned divided by the number of months of service.

(5) "Minimum retirement date" means the first day of the month coinciding with or, if none coincides, the date on which a member both becomes age 50 and completes 5 years of membership service.

(6) Any reference to "municipality", "city", or "town" includes those jurisdictions that, prior to the effective date of a county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban law enforcement services, or the entire county included in the county-municipal consolidation.

(7) "Police officer" means an appointed, lawfully trained, appropriately salaried, and regularly acting officer with the requisite professional certification and licensing.

(8) "Prior plan" means the local police reserve or pension trust fund of a city that elects to join the retirement system under 19-9-207.

(9) "Retirement date" means the date on which the first payment of the retirement, disability, or survivorship benefits of a member or a survivor is payable.

(10) "Surviving spouse" means the spouse married to a member at the time of the member's death.

(11) "Survivor" means a surviving spouse or dependent child of the member."

**Section 92.** Section 19-9-301, MCA, is amended to read:

**"19-9-301. Active membership — inactive vested member — inactive nonvested member.** (1) A police officer becomes an active member of the retirement system:

(a) on the date the police officer's service with an employer commences;

(b) on July 1, 1977, if the police officer is employed by an employer on that date; or

(c) in the case of an employer that elects to join the retirement system, as provided in 19-9-207, on the effective date of the election if the police officer is employed by the employer on that date. A person who is a member of the public employees' retirement system on the date of the employer's election may remain in the public employees' retirement system or may elect to become a member of



the municipal police officers' retirement system by filing a written election with the board no later than 30 days after the date of the employer's election.

(2) Upon becoming eligible for membership, the police officer shall complete the forms and furnish the proof required by the board.

(3) A member becomes an inactive member on the first day of an approved absence from service of a substantial duration.

(4) A member with at least 5 years of membership service who terminates service and does not take a refund of the member's accumulated contributions is an inactive vested member and retains the right to purchase service *credit* and to receive a retirement benefit under the provisions of this chapter.

(5) A member with less than 5 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible for any benefits from the retirement system. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions."

**Section 93.** Section 19-9-403, MCA, is amended to read:

**"19-9-403. Application to purchase military service.** (1) (a) Except as otherwise provided in ~~this section subsection (1)(b)~~ and subject to 19-9-406, a member with at least 15 years of service credit may, at any time prior to retirement, file a written application with the board to purchase *service credit and membership service* for up to 5 years of the member's active duty service in the armed forces of the United States ~~for the purpose of calculating retirement benefits.~~

~~(2) To purchase this military service, the member shall pay the actuarial cost of the member's military service, based on the system's most recent actuarial valuation.~~

~~(3) The member may not purchase more military service than the member's years of membership service in excess of 15 years.~~

~~(4)(b) A member is not eligible to purchase *active military service credit and membership service* under ~~this section subsection (1)(a)~~ if the member:~~

~~(a)(i) has retired from active duty in the armed forces of the United States with a military retirement benefit based on that military service;~~

~~(b)(ii) is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or~~

~~(c)(iii) is eligible to receive credit for that service in any other retirement system or plan.~~

(2) (a) Except as provided in subsection (2)(b) and subject to 19-9-406, a member with at least 15 years of service credit may, at any time prior to retirement, file a written application with the board to purchase *service credit and membership service* for up to 5 years of the member's reserve military service in the armed forces of the United States.

(b) A member is not eligible to purchase *reserve military service credit and membership service* under subsection (2)(a) if the member is eligible, pursuant to 19-2-707, to receive credit in the system for that service.

(3) To purchase *service credit and membership service* under this section, the member shall pay the actuarial cost of the member's active or reserve military service credit based on the system's most recent actuarial valuation.

(4) *The combined total of active and reserve military service credit and membership service a member may purchase may be no more than the member's service credit in excess of 15 years or 5 years, whichever is less.*"

**Section 94.** Section 19-9-405, MCA, is amended to read:

**"19-9-405. Purchase of other Montana public service.** (1) (a) A member may, at any time before retirement, file a written application with the board to purchase all or any portion of the member's service credit in the public employees', highway patrol officers', firefighters' unified, sheriffs', or game wardens' and peace officers' retirement system to the extent that the member either has received or is eligible to receive a refund of the member's accumulated contributions.

(b) To purchase this service *credit*, the member shall pay the actuarial cost of the service *credit* in the municipal police officers' retirement system, as determined by the board, based on the system's most recent actuarial valuation minus the employer contribution provided in subsection (1)(c).

(c) Upon receiving the member's payment under subsection (1)(b), the board shall transfer from the member's former retirement system to the municipal police officers' retirement system an amount equal to the employer contributions made during the member's service but no more than an amount equal to the regular contribution rate minus the employee contribution rate in the municipal police officers' retirement system, according to the most recent actuarial valuation, based on the salaries earned by the employee as a member of the former system.

(2) (a) A member may, at any time before retirement, file a written application with the board to purchase all or a portion of full-time public service employment performed for the state or a political subdivision of the state. The member shall provide salary and employment documentation certified by the member's public employer. The board shall grant service credit subject to the board's rules. To purchase service *credit* under this section, the employee shall pay the actuarial cost of the service *credit* in the municipal police officers' retirement system, as determined by the board, based on the system's most recent actuarial valuation.

(b) The board is the sole authority under this subsection (2) in determining what constitutes full-time public service."

**Section 95.** Section 19-9-406, MCA, is amended to read:

**"19-9-406. Service purchase limitation.** A member may not purchase more than a combined total of 5 years of service *credit* under 19-9-403 and 19-9-411."

**Section 96.** Section 19-9-410, MCA, is amended to read:

**"19-9-410. Transfer to public employees' retirement system.** When an injured nonvested member accepts a transfer under 7-32-4136 to a nonpolice position within the municipality covered under the public employees' retirement system, all service and contributions previously credited with the municipal police officers' retirement system must be transferred from the municipal police officers' retirement system pension trust fund along with the interest to the public employees' retirement system pension trust fund. The employer contributions and interest transferred must be equal to the amount that would have been contributed if the transferred service *credit* had been normal employment covered under the public employees' retirement system."

**Section 97.** Section 19-9-411, MCA, is amended to read:

**“19-9-411. Application to purchase additional service.** (1) Subject to 19-9-406, a member with at least 5 years of membership service may, at any time before retirement, file a written application with the board to purchase 1 year of additional service credit for each 5 years of membership service.

(2) To purchase service *credit* under this section, a member shall pay the actuarial cost of the service, based on the system’s most recent actuarial valuation as determined by the board.

(3) Service *credit* purchased under this section is not membership service and may not be used to qualify a member for retirement or in the calculation of an actuarial reduction in benefits for a member who is not eligible for ~~normal~~ service retirement.”

**Section 98.** Section 19-9-903, MCA, is amended to read:

**“19-9-903. Amount of disability retirement benefit — continuation of benefit after death of member.** (1) A member who ~~is eligible under 19-9-902 before earning 20 years of service credit must receive a disability retirement benefit equal to one-half the member’s final average compensation becomes disabled:~~

(a) ~~before completing 20 years of membership service must receive a disability retirement benefit equal to one-half the member’s final average compensation; or~~

(b) ~~after completing 20 years or more of membership service must receive a disability retirement benefit equal to 2.5% of the member’s final average compensation for each year of service credit.~~

~~(2) A member who is retired under 19-9-902 and who, at the time of the member’s injury or disability, was eligible at the member’s option to be retired under 19-9-801 but had elected to serve years in excess of 20 years of service credit and was then serving additional years must be paid for the additional years at the rate prescribed in 19-9-804.~~

~~(3)~~(2) Upon the death of a member receiving a disability retirement benefit under this section, the member’s surviving spouse or dependent child is eligible for benefits as provided in 19-9-804.”

**Section 99.** Section 19-9-1202, MCA, is amended to read:

**“19-9-1202. Definitions.** Unless the context requires otherwise, as used in this part, the following definitions apply:

(1) “DROP” means the deferred retirement option plan established pursuant to this part.

(2) “*DROP accrual*” means the monthly benefit, including any postretirement adjustments, that would have been payable had the participant terminated employment and retired, multiplied by each month of the DROP period that the participant completes, plus interest.

~~(2)~~(3) “DROP benefit” means the lump-sum benefit calculated and distributed as provided in this part.

~~(3)~~(4) “DROP period” means the period of time that a member irrevocably elects to participate in the DROP pursuant to 19-9-1204.

(5) "Monthly DROP accrual" means the amount equal to the monthly benefit that would have been payable to the participant had the participant terminated employment and retired.

(4)(6) "Participant" means a member of the retirement system who has elected to participate in the DROP pursuant to this part."

**Section 100.** 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(2) 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 ~~disability~~ *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."

**Section 101.** Section 19-9-1205, MCA, is amended to read:

**"19-9-1205. Retirement system contributions — benefit payments to individual accounts — investment returns.** (1) During a member's participation in the DROP, 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.

(2) For each DROP participant, the board shall calculate a DROP ~~benefit accrual equal to the monthly benefit, including any postretirement adjustments, that would have been payable had the participant terminated employment and retired, multiplied by each month of the DROP period that the participant completes.~~

**Section 102.** Section 19-9-1206, MCA, is amended to read:

**"19-9-1206. Survivorship benefits.** (1) If a participant dies prior to the receipt of the DROP benefit pursuant to 19-9-1208, the participant's surviving spouse or dependent child is entitled to receive a lump-sum payment equal to the participant's DROP benefit *and the member's accumulated contributions minus any benefits paid from the member's account, including monthly DROP accruals.*

(2) If there is no surviving spouse or dependent child, the designated beneficiary is entitled to receive a lump-sum payment equal to the participant's DROP benefit.

(3) The benefit paid pursuant to this section must include interest reflecting the retirement system's annual investment earnings from the date the member's DROP period commenced."

**Section 103.** 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) 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) 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 covered employment, 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 104.** Section 19-9-1208, MCA, is amended to read:

**"19-9-1208. Distribution of DROP benefit.** (1) Upon termination of covered employment, a participant is entitled to:

(a) receive a lump-sum distribution of the participant's DROP benefit;

(b) roll the participant's DROP benefit into another ~~qualified~~ *eligible retirement* plan in a manner prescribed and authorized by the board; or

(c) any other distribution or method of payment of the DROP benefit approved by the board.

(2) A distribution pursuant to this section is subject to the provisions of 19-2-907 and 19-2-909 and all other applicable provisions of Title 19 *and the Internal Revenue Code*.

(3) The amount of a distribution, rollover, transfer, or other payment of a DROP benefit pursuant to this section must include interest reflecting the retirement system's annual investment earnings from the date the member's DROP period commenced."

**Section 105.** 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 ~~regular~~ remuneration, ~~excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid for the firefighter's service as a firefighter out of~~ *paid from funds controlled by an employer in payment for the*

~~member's services before any pretax deductions allowed under the Internal Revenue Code have been 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; and*

(ii) *maintenance, allowances, and expenses.*

(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 any city that is of the first or second class or that elects to join this retirement system under 19-13-211 or, 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.

(5) "Final average compensation" means the monthly compensation of a member averaged over the last 36 months of the member's active service or, ~~if the member has not been a member that long, over the period of the member's~~ *in the event a member has not served at least 36 months, the total compensation earned divided by the number of months of service.* Lump-sum payments for annual leave paid to the member upon termination of ~~service~~ *employment* may be used to replace, on a month-for-month basis, the ~~normal~~ *regular* compensation for a month or months included in the calculation of final average compensation.

(6) "Firefighter" means a person employed as a full-paid or part-paid firefighter by an employer.

(7) "Full-paid firefighter" means a person appointed *by an employer* as a firefighter under *the standards provided in 7-33-4106.*

(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 becomes both age 50 or older and completes 5 or more years of membership service.

(9) "Part-paid firefighter" means a person employed under 7-33-4109 who receives compensation in excess of \$300 a year for service as a firefighter.

(10) "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.

(11) "Retirement date" means the date on which the first payment of benefits is payable.

(12) "Retirement system" means the firefighters' unified retirement system provided for in this chapter.

(13) "Surviving spouse" means the spouse married to a member at the time of the member's death."

**Section 106.** Section 19-13-301, MCA, is amended to read:

**"19-13-301. Active membership — inactive vested member — inactive nonvested member.** (1) Except as provided in subsection (7), a full-paid firefighter becomes an active member of the retirement system:

(a) on the first day of the firefighter's service with an employer;

(b) on July 1, 1981, if the firefighter is employed by an employer on that date;  
or

(c) in the case of an employer who elects to join the retirement system, as provided in 19-13-211, on the effective date of the election if the firefighter is employed by the employer on that date.

(2) Upon becoming eligible for membership, the firefighter shall complete the forms and furnish any proof required by the board.

(3) A part-paid firefighter may elect to become a member of the retirement system by filing a membership application with the board within 6 months of becoming a part-paid firefighter or March 21, 2001, whichever is later.

(4) An active member becomes an inactive member upon the occurrence of the earliest of the following:

(a) the date on which the member ceases service with an employer;

(b) the 31st day of an approved absence from active duty with an employer;  
or

(c) the date on which the member ceases to be employed because of a reduction of the number of firefighters in the fire department as provided in 7-33-4125.

(5) A member with at least 5 years of membership service who terminates service and does not take a refund of the member's accumulated contributions is an inactive vested member and retains the right to purchase service *credit* and to receive a retirement benefit under the provisions of this chapter.

(6) A member with less than 5 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible for any benefits from the retirement system. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions.

(7) (a) A firefighter previously employed in a position covered under the public employees' retirement system and who is first hired into a position covered under the firefighters' unified retirement system after attaining 45 years of age may elect to remain in the public employees' retirement system.

(b) A firefighter making an election to remain in the public employees' retirement system shall make the election in a manner prescribed by the board within 30 days of being hired into the position otherwise covered under the firefighters' unified retirement system."

**Section 107.** Section 19-13-403, MCA, is amended to read:

**“19-13-403. Application to purchase military service.** (1) (a) Except as otherwise provided in this section subsection (1)(b) and subject to 19-13-406, a member with at least 15 years of service credit may, at any time prior to retirement, file a written application with the board to purchase *service credit and membership service* for up to 5 years of the member's active duty service in the armed forces of the United States ~~for the purpose of calculating retirement benefits.~~

~~(b) To purchase this military service, the member shall pay the actuarial cost of the service, based on the system's most recent actuarial valuation.~~

~~(2) A member may not purchase more military service than the member's years of membership service in excess of 15 years.~~

~~(3)(b) A member is not eligible to purchase active military service credit and membership service under this section subsection (1)(a) if the member:~~

~~(a)(i) has retired from active duty in the armed forces of the United States with military retirement benefits based on that military service;~~

~~(b)(ii) is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or~~

~~(c)(iii) is eligible to receive credit for that service in any other retirement system or plan.~~

(2) (a) *Except as provided in subsection (2)(b) and subject to 19-13-406, a member with at least 15 years of service credit may, at any time prior to retirement, file a written application with the board to purchase service credit and membership service for up to 5 years of the member's reserve military service in the armed forces of the United States.*

(b) *A member is not eligible to purchase reserve military service credit and membership service under subsection (2)(a) if the member is eligible, pursuant to 19-2-707, to receive credit in the system for that service.*

(3) *To purchase service credit and membership service under this section, the member shall pay the actuarial cost of the service credit based on the system's most recent actuarial valuation.*

(4) *The combined total of active and reserve military service credit and membership service a member may purchase may be no more than the member's service credit in excess of 15 years or 5 years, whichever is less.*

~~(4)(5) Military service credit and membership service purchased under this section is not membership service and may not be used in determining the member's eligibility for a service retirement benefit.”~~

**Section 108.** Section 19-13-405, MCA, is amended to read:

**“19-13-405. Application to purchase additional service.** (1) Subject to 19-13-406, a member with at least 5 years of membership service may, at any time before retirement, file a written application with the board to purchase 1 year of additional service credit for each 5 years of membership service.

(2) To purchase service *credit* under this section, a member shall pay the actuarial cost of the service *credit*, based on the system's most recent actuarial valuation as determined by the board.

(3) Service *credit* purchased under this section is not membership service and may not be used to qualify a member for retirement or in the calculation of an actuarial reduction in benefits for a member who is not eligible for ~~normal~~ service retirement.”



**Section 109.** Section 19-13-406, MCA, is amended to read:

**“19-13-406. Service purchase limitation.** A member may not purchase more than a combined total of 5 years of service *credit* under 19-13-403 and 19-13-405.”

**Section 110.** Section 19-13-701, MCA, is amended to read:

**“19-13-701. Eligibility for service retirement.** (1) A member who has completed 20 years or more of membership service has attained normal retirement age and is eligible for service retirement.

(2) A vested member who terminates service before ~~the minimum retirement date~~ *completing 20 years of service* and keeps the member's accumulated contributions on deposit has attained normal retirement age and is eligible for service retirement commencing on the member's minimum retirement date.”

**Section 111.** Section 19-13-704, MCA, is amended to read:

**“19-13-704. Amount of service retirement benefit.** (1) Except as provided in subsection (2), a member who retires with at least 5 years of membership service must receive a service retirement benefit equal to 2.5% of the member's final average compensation for each year of service credit.

(2) A member hired before July 1, 1981, who does not elect to be covered under 19-13-1010 is entitled to the greater of:

(a) the benefit provided under subsection (1); or

(b) (i) if the member retires with less than 20 years of *membership* service, a benefit equal to 2% of the member's final monthly compensation for each year of service; or

(ii) if the member retires with 20 or more years of *membership* service, a benefit equal to 50% of the member's final monthly compensation plus 2% of the member's final monthly compensation for each year of service over 20 years.

(3) Upon a retired member's death, the benefit must be made to the surviving spouse. If there is no surviving spouse or if the surviving spouse dies and if the member leaves one or more dependent children, the children are entitled to receive the benefit as long as they remain dependent children as defined in 19-13-104.”

**Section 112.** Section 19-13-803, MCA, is amended to read:

**“19-13-803. Amount of disability retirement benefit.** (1) A member who becomes disabled:

(a) before completing 20 years of membership service must receive a disability retirement benefit equal to one-half the member's final average compensation;

(b) after completing 20 years or more of membership service must receive a disability retirement benefit equal to 2.5% of the member's final average compensation for each year of service credit.

(2) ~~A member's disability retirement benefit must be paid first to the member during the member's lifetime and, upon the member's death, to the member's surviving spouse. If upon a member's~~ *Upon the death of a member receiving a disability retirement benefit under this section, the member leaves no* ~~member's surviving spouse or upon the death of the surviving spouse, the member's benefit must be paid to the member's dependent children as long as~~

~~they remain dependent children~~ *child is eligible for benefits as defined provided in 19-13-104.*"

**Section 113.** Section 19-13-1007, MCA, is amended to read:

**"19-13-1007. Minimum benefit adjustment.** (1) The following applies to a member with 10 or more years of *memberships* service who has not elected to be covered under 19-13-1010:

(a) For the member or the member's surviving spouse or dependent children, the service retirement benefit provided in 19-13-704, the disability retirement benefit provided in 19-13-803, and the survivorship benefit provided in 19-13-902 may not be less than one-half the monthly compensation paid to a newly confirmed, active firefighter of the employer that last employed the member as a firefighter, as provided each year in the budget of that employer.

(b) If after a member retires, the employer that last employed the member no longer employs a full-paid firefighter, the member's or survivor's benefit under subsection (1)(a) must be adjusted on the basis of the average monthly compensation paid to all newly confirmed full-paid firefighters, as provided each year in the budgets of those employers that participate in the retirement system and employ a full-paid firefighter.

(2) If the employment of a vested member hired before July 1, 1981, who has not elected to be covered under 19-13-1010 is involuntarily discontinued because of the termination of employment of all full-paid firefighters of the employer that employed the member, the member's service retirement benefit provided in 19-13-704 and the member's spouse's or dependent child's survivorship benefit provided in 19-13-902(1) may not be less than:

(a) if the member has earned 20 years or more of membership service, one-half the average monthly compensation paid to all newly confirmed, full-paid firefighters, as provided each year in the budgets of those employers that participate in the retirement system and employ a full-paid firefighter; or

(b) if the member has earned more than 5 but less than 20 years of membership service, 2.5% of the average monthly compensation paid to all newly confirmed, full-paid firefighters, as provided each year in the budgets of those employers that participate in the retirement system and employ a full-paid firefighter, for each year of the member's service."

**Section 114.** Section 19-17-108, MCA, is amended to read:

**"19-17-108. Credit for service as volunteer firefighter.** (1) The annual period of service that may be credited under this chapter is the fiscal year. A fractional part of a year may not count toward the service required for participation in this system. To be eligible to receive credit for any particular year, a volunteer firefighter shall serve with a fire company throughout the entire fiscal year.

(2) The years of service are cumulative and need not be continuous. Separate periods of service properly credited with different fire companies in different fire districts must be credited toward a member's eligibility for full or partial benefits.

(3) A volunteer firefighter must receive credit for service during any fiscal year if:

(a) during the fiscal year, the volunteer firefighter completes a minimum of 30 hours of instruction in matters pertaining to firefighting under a formal

program that has been formulated, supervised, and certified to the board by the chief or supervisor of the fire company;

(b) *the volunteer firefighter's participation in the program is documented in the fire department records filed and maintained by the chief or supervisor;*

~~(b)~~(c) the fire company maintained firefighting equipment that is in serviceable condition and owns one or more buildings used for the storage of that equipment that all together are valued at \$12,000 or more; and

~~(c)~~(d) the fire company or the fire district served by it was rated in class 5, 6, 7, 8, 9, or 10 by the board of fire underwriters for the purpose of fire insurance premium rates."

**Section 115.** Section 19-17-402, MCA, is amended to read:

**"19-17-402. Certificate of eligibility.** The chief or presiding officer of each fire company that claims eligibility under this chapter shall, on or before September 1 of each year, file a certificate on a form to be provided by the board, subscribed and verified under oath *before a notary*, stating whether the company qualified under 19-17-108(3) during the preceding fiscal year. The certificate must contain the date of organization. The certificate must list 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 satisfactorily completed 30 hours of instruction during the preceding fiscal year, as required by 19-17-108(3). The certificate must be maintained by the board for the purpose of establishing service for members and eligibility for benefits."

**Section 116.** Section 19-17-403, MCA, is amended to read:

**"19-17-403. Application for benefits.** (1) A member may, as provided in this section, apply for retirement benefits before terminating ~~covered~~ service, but commencement of the benefits must be as provided in 19-17-411.

(2) A member, surviving spouse, or dependent child shall apply for benefits on a form provided by the board.

(3) The application must contain:

(a) the name, address, and date of birth of the member, surviving spouse, or dependent child;

(b) the date of birth of the member;

(c) the date of the member's death, if applicable; and

(d) the fiscal years during which service as an active member is claimed and the names of the fire companies with which the service was rendered.

(4) The board may require any proof of age, death, and service that it may consider proper, but it must accept a certificate properly completed and timely filed under 19-17-402 or subsection (3) of section 22, Chapter 157, Laws of 1977, as prima facie proof of service."

**Section 117.** Section 19-17-405, MCA, is amended to read:

**"19-17-405. Survivorship benefits to surviving spouse or dependent children.** (1) Subject to *subsection (2) and* the limitation in subsection ~~(3)~~(4), survivorship benefits equal to the full or partial pension benefits otherwise payable to the deceased member must be paid or continue to be paid to:

(a) the surviving spouse ~~or~~, *unless the spouse is convicted of knowingly, purposely, or intentionally causing a member's death or disability;*

(b) *the dependent children upon the spouse's death; or*

(c) if the deceased member left no surviving spouse but left a dependent child, to the guardian or other person having custody of the dependent child.

(2) *Benefits payable to a dependent child must be paid pursuant to 19-2-803.*

~~(2)~~(3) The survivorship benefit must be paid in each of the following circumstances:

(a) the death on or after July 1, 1995, of a member who had at least 10 years of service and who was not receiving pension benefits; or

(b) the death on or after July 1, 1985, of a retired member who was receiving pension benefits but who had not received benefits for a total of 40 months.

~~(3)~~(4) Survivorship benefits under subsection (1) terminate when benefits have been paid for a total of 40 months, including any pension or disability benefits paid to the retiree before death. At the request of the recipient, a lump-sum payment may be made in lieu of up to 40 months of survivorship benefits.”

**Section 118.** Section 19-50-102, MCA, is amended to read:

**“19-50-102. Deferred compensation programs permitted — rules.** (1) The state or a political subdivision may establish deferred compensation plans that are eligible under section 457 of the Internal Revenue Code of 1954, ~~26 U.S.C. 457~~, as amended or superseded, and in compliance with regulations of the U.S. department of the treasury. Eligible deferred compensation plans for employees may be established in addition to any retirement, pension, or other benefit plan administered by the state or a political subdivision.

(2) An employee may enter into a written agreement with the state or a political subdivision to defer a part of the employee’s compensation to one or more of the investment options provided in subsection (4) for the purpose of investment as provided by this chapter. The total amount deferred may not exceed the employee’s annual salary and may not exceed the amounts permitted under applicable sections of the Internal Revenue Code.

(3) Compensation deferred pursuant to this chapter is included as compensation for the purpose of computing retirement or pension benefits.

(4) The board or an appropriate officer of a political subdivision shall from time to time select the type of investment options and the financial institutions or entities in which state or political subdivision employee deferred compensation plan funds may be invested. The board or an appropriate officer of a political subdivision shall notify affected plan members of potential changes in investment options and financial institutions before the changes are made. The investment options and entities may include:

(a) a state deferred compensation investment fund established pursuant to Title 17 for the purpose of administering a state-invested deferred compensation plan. All contributions made by participants in the state deferred compensation investment fund and all interest or increase in the fund must be credited to the fund. These state-invested funds may be commingled with other state investment funds, but separate accounting must be maintained. The assets of the fund must be maintained for the benefit of participants and may not be diverted except for paying the reasonable expenses for administering the state deferred compensation investment fund.

(b) savings accounts in federally insured financial institutions;

(c) life insurance contracts and fixed annuity and variable annuity contracts from companies that are licensed to do business in the state and subject to regulation by the insurance commissioner;

(d) investment funds managed pursuant to investment services contracts maintained by the board or an appropriate officer of a political subdivision with investment managers registered with the United States securities and exchange commission, *unless exempt from the commission's regulation*;

(e) mutual funds provided through contracts maintained by the board or an appropriate officer of a political subdivision with mutual fund companies regulated by the United States securities and exchange commission, *unless exempt from the commission's regulation*; or

(f) a combination of the items in subsections (4)(a) through (4)(e).

(5) The deferred compensation plan funds invested pursuant to this section and the income from those funds must be held in a trust, custodial account, or insurance contract for the exclusive benefit of participants and their beneficiaries.

(6) The administrator may allocate any necessary costs against the assets and interest earnings accumulated in funds, accounts, or contracts established under this chapter.

(7) The board or appropriate officer of a political subdivision shall promulgate rules not inconsistent with this chapter for the proper administration of deferred compensation plans established under this chapter."

**Section 119.** 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; ~~and~~

(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; and*

(j) *benefits or payments paid or payable from a retirement system or plan within Title 19, chapter 20, as provided by 19-20-706.*

(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 120. Repealer.** Sections 19-3-509, 19-3-1604, 19-6-802, 19-7-802, 19-8-902, 19-9-405, and 19-13-404, MCA, are repealed.

**Section 121. Codification instruction.** [Section 1] 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 1].

**Section 122. Coordination instruction.** If either House Bill No. 44 or Senate Bill No. 66, or both, and [this act] are passed and approved then:

- (1) Section 22 of [this act], amending 19-3-503, MCA, must read as follows:

**"Section 22.** Section 19-3-503, MCA, is amended to read:

**"19-3-503. Application to purchase military service.** (1) (a) Except as provided in subsection ~~(2)~~ (1)(b) and subject to 19-3-514, a member with at least ~~10~~ 5 years of *membership service credit* may, at any time prior to retirement, file a written application with the board to purchase service credit *and membership service* for up to 5 years of the member's active service in the armed forces of the United States, including the first special service force or the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to August 15, 1945.

~~(b) To purchase this service, the member shall pay the actuarial cost of the member's military service, based on the system's most recent actuarial valuation.~~

~~(2)(b)~~ A member is not eligible to purchase *active military service credit and membership service* under ~~this section~~ subsection (1)(a) if the member:

~~(a)(i)~~ has retired from active duty in the armed forces of the United States, including the first special service force or the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to August 15, 1945, with a military service retirement benefit based on that military service;

~~(b)(ii)~~ is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

~~(c)(iii)~~ is eligible to receive credit for that service in any other retirement system or plan.

(2) (a) Except as provided in subsection (2)(b) and subject to 19-3-514, a member with at least 5 years of *membership service* may, at any time prior to retirement, file a written application with the board to purchase service credit *and membership service* for up to 5 years of the member's reserve military service in the armed forces of the United States.

(b) A member is not eligible to purchase reserve military service credit and membership service under subsection (2)(a) if the member is eligible, pursuant to 19-2-707, to receive credit in the system for that service.

(3) To purchase service credit and membership service under this section, the member shall pay the actuarial cost of the member's active or reserve military service credit based on the system's most recent actuarial valuation."

(2) Section 66 of [this act], amending 19-6-801, must read as follows:

**“Section 66.** Section 19-6-801, MCA, is amended to read:

**“19-6-801. Application to purchase military service.** (1) (a) Except as otherwise provided in this section subsection (1)(b) and subject to 19-6-805, ~~a~~ an eligible member with at least 15 years of service credit may, at any time prior to retirement, file a written application with the board to purchase *service credit and membership service* for up to 5 years of the member’s active service in the armed forces of the United States ~~for the purpose of calculating retirement benefits.~~

~~(2) To purchase this military service:~~

~~(a) a member who is not covered by 19-6-710 shall contribute the amount determined by the board to be due based on the member’s compensation and regular contribution rate in the member’s 16th year for the 1st year purchased and, for each subsequent year purchased, an amount based on the member’s compensation and contribution rate in each of as many years succeeding the member’s 16th year as are required to complete the purchase, with regular interest from the date the member becomes eligible for this benefit to the date the purchase is complete. The member may not purchase more military service under this subsection (2)(a) than the member has service credit in excess of 15 years.~~

~~(b) a member who is covered by 19-6-710 shall pay the actuarial cost of the member’s military service, based on the system’s most recent actuarial valuation.~~

~~(3)(b) A member is not eligible to purchase *active military service credit and membership service* under this section subsection (1)(a) if the member:~~

~~(a)(i) has retired from active duty in the armed forces of the United States with military retirement benefits based on that military service;~~

~~(b)(ii) is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or~~

~~(c)(iii) is eligible to receive credit for that service in any other retirement system or plan.~~

(2) (a) Except as provided in subsection (2)(b) and subject to 19-6-805, a member with at least 5 years of membership service may, at any time prior to retirement, file a written application with the board to purchase *service credit and membership service* for up to 5 years of the member’s reserve military service in the armed forces of the United States.

(b) A member is not eligible to purchase *reserve military service credit and membership service* under subsection (2)(a) if the member is eligible, pursuant to 19-2-707, to receive credit in the system for that service.

(3) To purchase *service credit and membership service* under this section:

(a) a member with at least 15 years of service credit who is not covered by 19-6-710 shall contribute the amount determined by the board to be due based on the member’s compensation and regular contribution rate in the member’s 16th year for the 1st year purchased and, for each subsequent year purchased, an amount based on the member’s compensation and contribution rate in each of as many years succeeding the member’s 16th year as are required to complete the purchase, with regular interest from the date the member becomes eligible for this benefit to the date the purchase is complete. The combined total of active and

reserve military service credit and membership service that a member may purchase may be no more than the member's service credit in excess of 15 years or 5 years, whichever is less.

(b) a member with at least 5 years of membership service who is covered by 19-6-710 shall pay the actuarial cost of the member's active or reserve military service credit based on the system's most recent actuarial valuation.”

(3) Section 76 of [this act], amending 19-7-803, must read as follows:

“**Section 76.** Section 19-7-803, MCA, is amended to read:

“**19-7-803. Application to purchase military service.** (1) (a) Except as otherwise provided in this section subsection (1)(b) and subject to 19-7-805, a member with at least 5 years of membership service credit may, at any time prior to retirement, file a written application with the board to purchase service credit and membership service for up to 5 years of the member's active service in the armed forces of the United States for the purpose of calculating retirement benefits.

~~(2) To purchase this military service, the member shall pay the actuarial cost of the member's military service, based on the system's most recent actuarial valuation.~~

~~(b)~~ (b) A member is not eligible to purchase active military service credit and membership service under this section subsection (1)(a) if the member:

~~(a)~~ (a)(i) has retired from active duty in the armed forces of the United States with military retirement benefits based on that military service;

~~(b)~~ (b)(ii) is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

~~(c)~~ (c)(iii) is eligible to receive credit for that service in any other retirement system or plan.

(2) (a) Except as provided in subsection (2)(b) and subject to 19-7-805, a member with at least 5 years of membership service may, at any time prior to retirement, file a written application with the board to purchase service credit and membership service for up to 5 years of the member's reserve military service in the armed forces of the United States.

(b) A member is not eligible to purchase reserve military service credit and membership service under subsection (2)(a) if the member is eligible, pursuant to 19-2-707, to receive credit in the system for that service.

(3) To purchase service credit and membership service under this section, the member shall pay the actuarial cost of the member's active or reserve military service credit based on the system's most recent actuarial valuation.

~~(4) Military service credit purchased under this section subsection (1) or (2) is not membership service and may not be used in determining the member's eligibility for a service retirement benefit.”~~

(4) Section 77 of [this act], amending 19-7-804, must read as follows:

“**Section 77.** Section 19-7-804, MCA, is amended to read:

“**19-7-804. Application to purchase additional service.** (1) Subject to 19-7-805, a member with at least 5 years of membership service may, at any time before retirement, file a written application with the board to purchase 1 additional year of service credit for each 5 years of membership service.



(2) To purchase service *credit* under this section, a member shall pay the actuarial cost of the service *credit* in the sheriffs' retirement system, as determined by the board, based on the system's most recent actuarial valuation.

~~(3) Service purchased under this section may not be used to qualify a member for the purchase of military service under 19-7-803.~~

~~(4)(3) Service *credit* purchased under this section must be credited for the purpose of meeting retirement eligibility and for calculating retirement benefits."~~

(5) Section 87 of [this act], amending 19-8-901, must read as follows:

**"Section 87.** Section 19-8-901, MCA, is amended to read:

**"19-8-901. Application to purchase military service.** (1) (a) Except as otherwise provided in ~~this section subsection (1)(b)~~ and subject to 19-8-906, a member with at least ~~4~~ 5 years of *membership service credit* may, at any time prior to retirement, file a written application with the board to purchase *service credit and membership service* for up to 5 years of the member's active service in the armed forces of the United States ~~for the purpose of calculating retirement benefits.~~

~~(b) To purchase this military service, the member shall pay the actuarial cost of the member's military service, based on the system's most recent actuarial valuation as determined by the board.~~

~~(2)(b) A member is not eligible to purchase *active military service credit and membership service* under ~~this section subsection (1)(a)~~ if the member:~~

~~(a)(i) has retired from active duty in the armed forces of the United States with military retirement benefits based on that military service;~~

~~(b)(ii) is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or~~

~~(c)(iii) is eligible to receive credit for that service in any other retirement system or plan.~~

~~(2) (a) Except as provided in subsection (2)(b) and subject to 19-8-906, a member with at least 5 years of *membership service* may, at any time prior to retirement, file a written application with the board to purchase *service credit and membership service* for up to 5 years of the member's reserve military service in the armed forces of the United States.~~

~~(b) A member is not eligible to purchase *reserve military service credit and membership service* under subsection (2)(a) if the member is eligible, pursuant to 19-2-707, to receive credit in the system for that service.~~

~~(3) To purchase *service credit and membership service* under this section, the member shall pay the actuarial cost of the member's active or reserve military service based on the system's most recent actuarial valuation."~~

(6) Section 93 of [this act], amending 19-9-403, must read as follows:

**"Section 93.** Section 19-9-403, MCA, is amended to read:

**"19-9-403. Application to purchase military service.** (1) (a) Except as otherwise provided in ~~this section subsection (1)(b)~~ and subject to 19-9-406, a member with at least ~~4~~ 5 years of *membership service credit* may, at any time prior to retirement, file a written application with the board to purchase *service credit and membership service* for up to 5 years of the member's active duty

service in the armed forces of the United States ~~for the purpose of calculating retirement benefits.~~

~~(2) To purchase this military service, the member shall pay the actuarial cost of the member's military service, based on the system's most recent actuarial valuation.~~

~~(3) The member may not purchase more military service than the member's years of membership service in excess of 15 years.~~

~~(4)(b) A member is not eligible to purchase active military service credit and membership service under this section subsection (1)(a) if the member:~~

~~(a)(i) has retired from active duty in the armed forces of the United States with a military retirement benefit based on that military service;~~

~~(b)(ii) is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or~~

~~(c)(iii) is eligible to receive credit for that service in any other retirement system or plan.~~

*(2) (a) Except as provided in subsection (2)(b) and subject to 19-9-406, a member with at least 5 years of membership service may, at any time prior to retirement, file a written application with the board to purchase service credit and membership service for up to 5 years of the member's reserve military service in the armed forces of the United States.*

*(b) A member is not eligible to purchase reserve military service credit and membership service under subsection (2)(a) if the member is eligible, pursuant to 19-2-707, to receive credit in the system for that service.*

*(3) To purchase service credit and membership service under this section, the member shall pay the actuarial cost of the member's active or reserve military service credit based on the system's most recent actuarial valuation."*

(7) Section 107 of [this act], amending 19-13-403, must read as follows:

**"Section 107.** Section 19-13-403, MCA, is amended to read:

**"19-13-403. Application to purchase military service.** (1) (a) Except as otherwise provided in ~~this section subsection (1)(b)~~ and subject to 19-13-406, a member with at least ~~45~~ 5 years of *membership service credit* may, at any time prior to retirement, file a written application with the board to purchase *service credit and membership service* for up to 5 years of the member's active duty service in the armed forces of the United States ~~for the purpose of calculating retirement benefits.~~

~~(b) To purchase this military service, the member shall pay the actuarial cost of the service, based on the system's most recent actuarial valuation.~~

~~(2) A member may not purchase more military service than the member's years of membership service in excess of 15 years.~~

~~(3)(b) A member is not eligible to purchase active military service credit and membership service under this section subsection (1)(a) if the member:~~

~~(a)(i) has retired from active duty in the armed forces of the United States with military retirement benefits based on that military service;~~

~~(b)(ii) is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or~~

~~(c)(iii) is eligible to receive credit for that service in any other retirement system or plan.~~

(2) (a) Except as provided in subsection (2)(b) and subject to 19-13-406, a member with at least 5 years of membership service may, at any time prior to retirement, file a written application with the board to purchase service credit and membership service for up to 5 years of the member's reserve military service in the armed forces of the United States.

(b) A member is not eligible to purchase reserve military service credit and membership service under subsection (2)(a) if the member is eligible, pursuant to 19-2-707, to receive credit in the system for that service.

(3) To purchase service credit and membership service under this section, the member shall pay the actuarial cost of the service credit based on the system's most recent actuarial valuation.

~~(4) Military service purchased under this section is not membership service and may not be used in determining the member's eligibility for a service retirement benefit."~~

**Section 123. Effective date.** [This act] is effective July 1, 2003.

Approved April 21, 2003

## CHAPTER NO. 430

[HB 292]

AN ACT CLARIFYING THAT THE LAW GOVERNING COUNTY ACQUISITION OF REAL PROPERTY APPLIES TO THE ACQUISITION OF CONSERVATION EASEMENTS; PROVIDING FOR AN INDEPENDENT APPRAISAL OF CERTAIN CONSERVATION EASEMENTS BY A CERTIFIED GENERAL REAL ESTATE APPRAISER PRIOR TO A COUNTY PURCHASE OF THOSE CONSERVATION EASEMENTS; CLARIFYING THAT LAWS GOVERNING OPEN SPACE AND CONSERVATION EASEMENTS DO NOT SUPERSEDE THE PROCEDURE FOR COUNTY ACQUISITION OF REAL PROPERTY AND CONSERVATION EASEMENTS; AMENDING SECTIONS 7-8-2202 AND 76-6-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 7-8-2202, MCA, is amended to read:

**"7-8-2202. Appraisal required for certain purchases of real property or conservation easements.** Unless otherwise provided by law, ~~no~~ a county may not purchase of real property exceeding the value in an amount in excess of ~~\$2,500~~ \$10,000 or a conservation easement using public funds in an amount in excess of \$40,000 ~~may be made~~ unless the value of the ~~same~~ property or conservation easement has been previously estimated by ~~three disinterested citizens of the county appointed by the district judge~~ a disinterested certified general real estate appraiser selected by the county commission, county attorney, and landowner. ~~for that purpose, and no~~ A county may not pay more than the appraised value ~~must be paid therefor~~ for the real property or conservation easement."

**Section 2.** 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 or a city, town, other municipality, or 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); ~~and~~

~~(f) livestock described in 15-6-136(1)(a).~~

(4) *This chapter does not supersede the provisions of 7-8-2202.*"

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

Approved April 21, 2003

## CHAPTER NO. 431

[HB 299]

AN ACT LIMITING THE LIABILITY OF OWNERS OF STOCK FOR TRESPASS TO INSTANCES OF NEGLIGENCE; CLARIFYING THAT HERD DISTRICT LAW APPLIES TO TRESPASSING ANIMALS IN HERD DISTRICTS; AMENDING SECTION 81-4-215, 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 81-4-215, MCA, is amended to read:

**"81-4-215. Liability of owners of stock for trespass.** If any cattle, horses, mules, asses, hogs, sheep, llamas, alpacas, bison, or other domestic animals break into any enclosure and the fence of the enclosure is legal, as provided in 81-4-101, the owner of the animals ~~is~~ is liable for ~~all~~ damages to the owner or occupant of the enclosure *if the owner or person in control of the animals was negligent.* This section may not be construed to require a legal fence in order to maintain an action for injury done by animals running at large contrary to law. *In the case of trespassing animals in a herd district, the liability and damage provisions of 81-4-307 apply.*"

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

**Section 3. Applicability.** [This act] applies to actions brought on or after [the effective date of this act].

Approved April 21, 2003

## CHAPTER NO. 432

[HB 338]

AN ACT INCREASING THE LENGTH OF TIME FOR WHICH AN INDIVIDUAL IS ELIGIBLE FOR UNEMPLOYMENT INSURANCE BENEFITS TO 28 WEEKS; REVISING THE RATIOS USED TO CALCULATE UNEMPLOYMENT INSURANCE CONTRIBUTION RATES; INCREASING THE MAXIMUM WEEKLY BENEFIT AMOUNT TO 66.5 PERCENT OF THE AVERAGE WEEKLY WAGE; AMENDING SECTIONS 39-51-1218, 39-51-2201, AND 39-51-2204, 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 39-51-1218, MCA, is amended to read:

**“39-51-1218. Rate schedules.**

SCHEDULES OF CONTRIBUTION RATES - Part I

	Sched. I	Sched. II	Sched. III	Sched. IV
Minimum Ratio of Fund to Total Wages	<del>(.0260)</del> (.0245)	<del>(.0245)</del> (.0225)	<del>(.0225)</del> (.0200)	<del>(.0200)</del> (.0170)
Average Tax Rate	1.37	1.57	1.77	1.97
Rate Class	Contribution Rates for Eligible Employers			
1	0.00%	0.07%	0.27%	0.47%
2	0.07	0.27	0.47	0.67
3	0.27	0.47	0.67	0.87
4	0.47	0.67	0.87	1.07
5	0.67	0.87	1.07	1.27
6	0.87	1.07	1.27	1.47
7	1.07	1.27	1.47	1.67
8	1.27	1.47	1.67	1.87
9	1.47	1.67	1.87	2.07
10	1.67	1.87	2.07	2.27
Rate Class	Contribution Rates for Deficit Employers			
1	3.17%	3.37%	3.57%	3.77%
2	3.37	3.57	3.77	3.97
3	3.57	3.77	3.97	4.17
4	3.77	3.97	4.17	4.37
5	3.97	4.17	4.37	4.57
6	4.17	4.37	4.57	4.77
7	4.37	4.57	4.77	4.97
8	4.57	4.77	4.97	5.17
9	4.77	4.97	5.17	5.37
10	6.37	6.37	6.37	6.37

SCHEDULES OF CONTRIBUTION RATES - Part II

Sched. V	Sched. VI	Sched. VII	Sched. VIII	Sched. IX	Sched. X
<del>(.0170)</del>	<del>(.0135)</del>	<del>(.0095)</del>	<del>(.0075)</del>	<del>(.0050)</del>	<del>(...)</del>
(.0135)	(.0095)	(.00575)	(.0050)	(...)	(...)
2.17	2.37	2.57	2.77	2.97	3.17

## Contribution Rates for Eligible Employers

0.67%	0.87%	1.07%	1.27%	1.47%	1.67%
0.87	1.07	1.27	1.47	1.67	1.87
1.07	1.27	1.47	1.67	1.87	2.07
1.27	1.47	1.67	1.87	2.07	2.27
1.47	1.67	1.87	2.07	2.27	2.47
1.67	1.87	2.07	2.27	2.47	2.67
1.87	2.07	2.27	2.47	2.67	2.87
2.07	2.27	2.47	2.67	2.87	3.07
2.27	2.47	2.67	2.87	3.07	3.27
2.47	2.67	2.87	3.07	3.27	3.47

## Contribution Rates for Deficit Employers

3.97%	4.17%	4.37%	4.57%	4.77%	4.97%
4.17	4.37	4.57	4.77	4.97	5.17
4.37	4.57	4.77	4.97	5.17	5.37
4.57	4.77	4.97	5.17	5.37	5.57
4.77	4.97	5.17	5.37	5.57	5.77
4.97	5.17	5.37	5.57	5.77	5.97
5.17	5.37	5.57	5.77	5.97	6.17
5.37	5.57	5.77	5.97	6.17	6.37
5.57	5.77	5.97	6.17	6.37	6.37
6.37	6.37	6.37	6.37	6.37	6.37

**Section 2.** Section 39-51-2201, MCA, is amended to read:

**“39-51-2201. Weekly benefit amount — determination of average weekly wage.** (1) An individual’s weekly benefit amount must be an amount equal to 1% of the total base period wages or equal to 1.9% of the total wages paid in the 2 calendar quarters in which wages were the highest during the base period. The weekly benefit amount, if not a multiple of \$1, must be rounded to the nearest lower full dollar amount. However, the amount may not be less than the minimum or more than the maximum weekly benefit amount.

(2) On or before May 31 of each year, the total wages paid by all employers as reported on contribution reports submitted on or before that date for the preceding calendar year must be divided by the average monthly number of individuals employed during the same preceding calendar year as reported on the contribution reports. The amount obtained is the average annual wage. The average annual wage divided by 52, rounded to the nearest cent, is the average weekly wage. The maximum weekly benefit amount is ~~63%~~ 66.5% of the average weekly wage and must be applied to all maximum weekly benefit amount claims for benefits filed to establish a benefit year commencing on or after July 1 of the same year. The maximum weekly benefit amount, if not a multiple of \$1, must be computed to the nearest lower full dollar amount.

(3) The minimum weekly benefit amount must be 15% of the average weekly wage. The minimum weekly benefit amount, if not a multiple of \$1, must be computed to the nearest lower full dollar amount.”

**Section 3.** Section 39-51-2204, MCA, is amended to read:

**“39-51-2204. Maximum benefit amount.** Any otherwise eligible individual is entitled during the individual’s benefit year to a total amount of benefits equal to the individual’s weekly benefit amount, as calculated according to 39-51-2201, times the number of full weeks of benefit entitlement appearing in the following table in the line which includes the individual’s ratio of total base period earnings to the highest quarter of earnings in the base period:

Ratio of Total Base Period Earnings to High Quarter		Full Weeks of Benefits
At Least	But Less Than	
1.00	1.25	8
1.25	1.50	10
1.50	1.75	12
1.75	2.00	14
2.00	2.25	16
2.25	2.50	18
2.50	2.75	20
2.75	3.00	22
3.00	3.25	24
3.25	— 3.50	26
3.50	—	28”

**Section 4. Effective date — applicability.** [This act] is effective on passage and approval and applies to claims for benefits filed on or after October 1, 2003.

Approved April 21, 2003

## CHAPTER NO. 433

[HB 396]

AN ACT REQUIRING ANY PERSON WHO IS BORN AFTER JANUARY 1, 1985, TO PROVIDE A CERTIFICATE OF COMPLETION FROM A HUNTER SAFETY AND EDUCATION COURSE BEFORE THE PERSON MAY BE ISSUED A MONTANA HUNTING LICENSE; CLARIFYING THAT THE PERSON ISSUING THE LICENSE IS REQUIRED TO DETERMINE PROOF OF COMPLETION OF THE COURSE; CLARIFYING THAT THE MONTANA HUNTER SAFETY AND EDUCATION COURSE IS NOT LIMITED TO YOUTHS; AND AMENDING SECTION 87-2-105, MCA.

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

**Section 1.** Section 87-2-105, MCA, is amended to read:

**“87-2-105. Safety instruction required.** (1) A hunting license may not be issued to a ~~resident~~ person who is ~~under 18 years of age~~ *born after January 1, 1985*, unless the person authorized to issue the license ~~receives a certificate~~ *determines proof of completion from the* of:



(a) a Montana ~~youth~~ hunter safety and education course established in subsection ~~(5)~~.

~~(2) A hunting license may not be issued to a nonresident person who is under 18 years of age unless the person authorized to issue the license receives a certificate of completion from the Montana youth hunter safety and education course established in subsection (5) or a certificate verifying that the nonresident has successfully completed (4) or (6); or~~

(b) a hunter safety course in any *other* state or province.

~~(3)(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, as defined in 15-30-113, who reside in the member's Montana household, unless the person authorized to issue the license receives determines proof of completion of a hunter safety course approved by the department or a certificate verifying that the member or dependent has successfully completed a hunter safety course in any state or province.~~

~~(4)(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 receives determines proof of completion of a bowhunter education course from the national bowhunter education foundation. 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.~~

~~(5)(4) The department shall provide for a youth 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 to youth 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 youth hunter safety and education course to a person successfully completing the course.~~

~~(6)(5) The department shall provide for a course of instruction from the national bowhunter education foundation 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 the national bowhunter education foundation instruction. A person appointed shall give the course of instruction and shall issue a certificate of completion from the national bowhunter education foundation to any person successfully completing the course.~~

~~(7) The department may develop an adult hunter education course.~~

(6) *The department may develop an adult hunter safety and education course.*

~~(8)~~(7) The department may adopt rules regarding how a person authorized to issue a license determines proof of completion ~~or achievement of a required course.~~

Approved April 21, 2003

## CHAPTER NO. 434

[HB 408]

AN ACT REQUIRING THE PAYMENT OF LOCAL REGISTRAR FEES TO A COUNTY DEPARTMENT IF THE LOCAL REGISTRAR IS A COUNTY EMPLOYEE; AMENDING SECTION 50-15-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 50-15-107, MCA, is amended to read:

**“50-15-107. Payment of fees to local registrars.** (1) The department may specify by ~~regulation rule~~ a fee to be paid each local registrar for each complete birth, ~~fetal~~ death, or ~~fetal~~ death certificate forwarded by the local registrar to the department or a monthly report stating the local registrar did not file certificates.

(2) The department shall annually certify to the county treasurer the number of births, fetal deaths, deaths, or monthly reports received from ~~his~~ the county with the names of the local registrars and the amount due each.

(3) (a) The county treasurer shall pay each local registrar out of the county general fund.

(b) *If the local registrar, appointed pursuant to 50-15-104, is employed by the county, the payment under subsection (3)(a) must be made to the county office in which the local registrar is employed.*

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

Approved April 22, 2003

## CHAPTER NO. 435

[HB 410]

AN ACT PROVIDING THAT AN EMPLOYEE WHO IS INJURED OR DIES WHILE TRAVELING IN THE COURSE OF EMPLOYMENT IS ENTITLED TO COMPENSATION IF THE EMPLOYER FURNISHES THE EMPLOYEE'S TRANSPORTATION; PROVIDING THAT A PAYMENT MADE TO AN EMPLOYEE UNDER A COLLECTIVE BARGAINING AGREEMENT, PERSONNEL POLICY MANUAL, EMPLOYEE HANDBOOK, OR ANY OTHER DOCUMENT PROVIDED TO THE EMPLOYEE AS AN INCENTIVE TO WORK AT A JOBSITE IS NOT A REIMBURSEMENT FOR COSTS OF TRAVEL, GAS, OIL, OR LODGING; AMENDING SECTION 39-71-407, 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 39-71-407, MCA, is amended to read:

**“39-71-407. Liability of insurers — limitations.** (1) Each insurer is liable for the payment of compensation, in the manner and to the extent provided in this section, to an employee of an employer that it insures who receives an injury arising out of and in the course of employment or, in the case of death from the injury, to the employee’s beneficiaries, if any.

(2) (a) An insurer is liable for an injury, as defined in 39-71-119, if the injury is established by objective medical findings and if the claimant establishes that it is more probable than not that:

- (i) a claimed injury has occurred; or
- (ii) a claimed injury aggravated a preexisting condition.

(b) Proof that it was medically possible that a claimed injury occurred or that the claimed injury aggravated a preexisting condition is not sufficient to establish liability.

(3) (a) An employee who suffers an injury or dies while traveling is not covered by this chapter unless:

~~(a)~~(i) the employer furnishes the transportation or the employee receives reimbursement from the employer for costs of travel, gas, oil, or lodging as a part of the employee’s benefits or employment agreement; and

~~(ii)~~ the travel is necessitated by and on behalf of the employer as an integral part or condition of the employment; or

~~(b)~~(ii) the travel is required by the employer as part of the employee’s job duties.

(b) *A payment made to an employee under a collective bargaining agreement, personnel policy manual, or employee handbook or any other document provided to the employee that is not wages but is designated as an incentive to work at a particular jobsite is not a reimbursement for the costs of travel, gas, oil, or lodging, and the employee is not covered under this chapter while traveling.*

(4) An employee is not eligible for benefits otherwise payable under this chapter if the employee’s use of alcohol or drugs not prescribed by a physician is the major contributing cause of the accident. However, if the employer had knowledge of and failed to attempt to stop the employee’s use of alcohol or drugs, this subsection does not apply.

(5) If a claimant who has reached maximum healing suffers a subsequent nonwork-related injury to the same part of the body, the workers’ compensation insurer is not liable for any compensation or medical benefits caused by the subsequent nonwork-related injury.

(6) An employee is not eligible for benefits payable under this chapter unless the entitlement to benefits is established by objective medical findings that contain sufficient factual and historical information concerning the relationship of the worker’s condition to the original injury.

(7) As used in this section, “major contributing cause” means a cause that is the leading cause contributing to the result when compared to all other contributing causes.”

**Section 2. Effective date — applicability.** [This act] is effective on passage and approval and applies to claims for injuries that occur on or after [the effective date of this act].

Approved April 21, 2003

**CHAPTER NO. 436**

[HB 441]

AN ACT PROVIDING FOR THE PRORATION OF PROPERTY TAXES ON CENTRALLY ASSESSED PROPERTY WHEN LAND IS SUBDIVIDED; AND AMENDING SECTIONS 15-16-102 AND 76-3-207, MCA.

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

**Section 1.** 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 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 low-income property tax assistance provisions of 15-6-134(1)(c) and 15-6-191 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 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 taxable years, provided that taxes for both halves of 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.

(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 2.** Section 76-3-207, MCA, is amended to read:

**"76-3-207. Subdivisions exempted from review but subject to survey requirements — exceptions.** (1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of evading this chapter, the following divisions of land are not subdivisions under this chapter but are subject to the surveying requirements of 76-3-401 for divisions of land not amounting to subdivisions:

(a) divisions made outside of platted subdivisions for the purpose of relocating common boundary lines between adjoining properties;

(b) divisions made outside of platted subdivisions for the purpose of a single gift or sale in each county to each member of the landowner's immediate family;

(c) divisions made outside of platted subdivisions by gift, sale, or agreement to buy and sell in which the parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes;

(d) for five or fewer lots within a platted subdivision, relocation of common boundaries and the aggregation of lots; and

(e) divisions made for the purpose of relocating a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.

(2) Notwithstanding the provisions of subsection (1):

(a) within a platted subdivision filed with the county clerk and recorder, a division of lots that results in an increase in the number of lots or ~~which that~~ redesigns or rearranges six or more lots must be reviewed and approved by the governing body and an amended plat must be filed with the county clerk and recorder;

(b) a change in use of the land exempted under subsection (1)(c) for anything other than agricultural purposes subjects the division to the provisions of this chapter.

(3) (a) ~~A~~ *Subject to subsection (3)(b),* a division of land may not be made under this section unless the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be divided have been paid.

(b) (i) *If a division of land includes centrally assessed property and the property taxes applicable to the division of land are not specifically identified in the tax assessment, the department of revenue shall prorate the taxes applicable to the land being divided on a reasonable basis. The owner of the centrally assessed property shall ensure that the prorated real property taxes and special assessments are paid on the land being sold, before the division of land is made.*

(ii) *The county treasurer may accept the amount of the tax prorated pursuant to this subsection (3)(b) as a partial payment of the total tax that is due."*

Approved April 22, 2003

**CHAPTER NO. 437**

[HB 478]

AN ACT ALLOWING A CRIMINAL SENTENCE TO INCLUDE A PROVISION FOR THE SUSPENSION OF THE LICENSE OR DRIVING PRIVILEGE OF THE CONVICTED PERSON UPON THE FAILURE TO COMPLY WITH ANY PENALTY, RESTRICTION, OR CONDITION OF THE SENTENCE; PROVIDING A PROCEDURE FOR THE SUSPENSION OF THE LICENSE OR DRIVING PRIVILEGE; AMENDING SECTIONS 46-18-201 AND 61-5-214, 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) 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:

(a) a fine as provided by law for the offense;

(b) payment of costs, as provided in 46-18-232, or payment of costs of court-appointed counsel as provided in 46-8-113;

(c) a term of incarceration at a county detention center or state prison, as provided in Title 45, for the offense;

(d) commitment of:

(i) an offender not referred to in subsection (3)(d)(ii) 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; or

(ii) 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;

(e) 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;

(f) 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;

(g) chemical treatment of sex 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

(h) any combination of subsections (2) through (3)(g).

(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 court-appointed 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) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of the victim or society; or

(o) any combination of the restrictions or conditions listed in subsections (4)(a) through (4)(n).

(5) In addition to any penalties imposed pursuant to ~~subsection (1) this section~~, if the sentencing judge finds that the victim of the offense has sustained

a pecuniary loss, the sentencing judge shall require payment of full restitution to the victim as provided in 46-18-241 through 46-18-249.

*(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.*

~~(6)~~(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.

~~(7)~~(8) If a felony sentence includes probation, the department of corrections shall supervise the offender unless the court specifies otherwise.”

**Section 2.** Section 61-5-214, MCA, is amended to read:

**“61-5-214. Mandatory suspension for failure to appear or pay fine — notice.** (1) The department shall suspend the license or driving privilege of a person immediately upon receipt of a certified copy of a docket page or other sufficient evidence from the court that the person:

(a) is charged with or convicted of a violation of chapters 3 through 10 of this title *or fails to comply with a sentence imposed pursuant to 46-18-201*;

(b) (i) failed to post the set bond amount or appear upon issued complaint, summons, or court order; or

(ii) when assessed a fine, costs, or restitution of \$100 or more, failed to pay the fine, costs, or restitution; and

(c) received prior written notice that the driver’s license or driving privileges of the person will be suspended upon a failure to post bond or appear on an issued complaint, summons, or court order or upon a failure to pay assessed fines, costs, or restitution.

(2) The suspension continues in effect until the court notifies the department that the person has paid the reinstatement fee and either appeared in court or paid the assessed fines, costs, or restitution.

(3) The notice required under this section may be included on the summons or complaint and notice to appear form given to the person when charges are initially filed or may be contained in a court order, either hand-delivered to the person while in court or sent by first-class mail, postage prepaid, to the most current address for that person received by or on record with the court. The initial notice must be followed by a written warning from the court, sent by first-class mail, advising the person that a license suspension is imminent and of the probable consequences of a suspension unless the person appears or pays within a specified number of days.”

**Section 3. Applicability.** [This act] applies to sentences imposed for offenses committed on or after [the effective date of this act].

Approved April 22, 2003



**CHAPTER NO. 438**

[HB 484]

AN ACT PROVIDING THAT ASSESSMENT AND COUNSELING FOR A PERSON CONVICTED OF PARTNER OR FAMILY MEMBER ASSAULT MUST INCLUDE A FOCUS ON CONTROLLING BEHAVIOR; AND AMENDING SECTION 45-5-206, MCA.

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

**Section 1.** 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 with a person of the opposite sex.

(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) (i) For the purpose of determining the number of convictions under this section, a conviction means a conviction, as defined in 45-2-101, in this state,

conviction for a violation of a similar statute in another state, or 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 similar statute, which forfeiture has not been vacated. A prior conviction for domestic abuse under this section is a prior conviction for purposes of subsection (3)(a).

(ii) A conviction for assault with a weapon under 45-5-213, if the offender was a partner or family member of the victim, constitutes a conviction for the purpose of calculating prior convictions under this section.

(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 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~~ 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."

Approved April 21, 2003

## CHAPTER NO. 439

[HB 512]

AN ACT PROVIDING FOR THE ADDITION OF TERRITORY ADJACENT TO AN EXISTING PLANNING AND ZONING DISTRICT.

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

**Section 1. Addition of territory adjacent to existing planning and zoning district.** Territory that is directly adjacent to an existing planning and zoning district but that is not part of the district may be added to the district subject to the procedures provided in Title 76, chapter 2, part 1.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 76, chapter 2, part 1, and the provisions of Title 76, chapter 2, part 1, apply to [section 1].

Approved April 21, 2003

## CHAPTER NO. 440

[HB 537]

AN ACT REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO COMMISSION A NEW STUDY TO RECALCULATE THE ANNUAL SUSTAINABLE YIELD ON FORESTED STATE LANDS; SETTING THE ANNUAL TIMBER SALE TARGET AT 50 MILLION BOARD FEET UNTIL THE NEW STUDY IS COMPLETED; AMENDING SECTION 77-5-222, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 77-5-222, MCA, is amended to read:

**"77-5-222. Determination of annual sustainable yield.** (1) The department, ~~under the direction of the board,~~ *under the direction of the board,* shall commission a *new* study by a qualified independent third party to determine, using scientific principles, the annual sustainable yield on forested state lands. ~~The department shall direct the qualified independent third party to determine the yield pursuant to, but not exceeding, all state and federal laws.~~

(2) Until the *new* study required by subsection (1) is completed, the ~~annual sustainable yield is considered to be a range of 45 million board feet to 55 million board feet a year.~~

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

Approved April 21, 2003

**CHAPTER NO. 441**

[HB 540]

AN ACT REVISING THE LAWS RELATING TO THE SELECTION OF TRIAL JURIES; PROVIDING THAT TRIAL JURORS MUST BE SELECTED FROM A COMBINED LIST OF QUALIFIED ELECTORS AND LICENSED DRIVERS AND HOLDERS OF MONTANA IDENTIFICATION CARDS; ENSURING THAT NO PERSON'S NAME APPEARS ON THE COMBINED LIST MORE THAN ONCE; ELIMINATING THE REQUIREMENT THAT JURORS MUST BE REGISTERED ELECTORS; AMENDING SECTIONS 2-6-109, 3-15-301, 3-15-402, 3-15-403, 3-15-404, AND 46-17-202, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

**Section 1. Providing lists of licensed drivers and holders of Montana identification cards to clerks of district court — jury selection purposes.** (1) On the second Monday of May of each year, the department shall submit to the clerk of the district court of each county 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.

**Section 2.** Section 2-6-109, MCA, is amended to read:

**"2-6-109. Prohibition on distribution or sale of mailing lists — exceptions — penalty.** (1) Except as provided in subsections (3) through (9), in order to protect the privacy of those who deal with state and local government:

(a) an agency may not distribute or sell for use as a mailing list any list of persons without first securing the permission of those on the list; and

(b) a list of persons prepared by the agency may not be used as a mailing list except by the agency or another agency without first securing the permission of those on the list.

(2) As used in this section, "agency" means any board, bureau, commission, department, division, authority, or officer of the state or a local government.

(3) This section does not prevent an individual from compiling a mailing list by examination of original documents or applications that are otherwise open to public inspection.

(4) This section does not apply to the lists of registered electors and the new voter lists provided for in 13-2-115, ~~or~~ to lists of the names of employees governed by Title 39, chapter 31, *or to lists of persons holding driver's licenses or Montana identification cards provided for under [section 1].*

(5) This section does not prevent an agency from providing a list to persons providing preclicensing or continuing educational courses subject to state law or subject to Title 33, chapter 17.

(6) This section does not apply to the right of access by Montana law enforcement agencies.

(7) This section does not apply to a corporate information list developed by the secretary of state containing the name, address, registered agent, officers, and directors of business, nonprofit, religious, professional, and close corporations authorized to do business in this state.

(8) This section does not apply to the use by the public employees' retirement board of a mailing list of board-administered retirement system participants to send materials on behalf of a retiree organization formed for board-administered retirement system participants and with tax-exempt status under section 501(c)(4) of the Internal Revenue Code, as amended, for a fee determined by rules of the board, provided that the mailing list is not released to the organization.

(9) This section does not apply to a public school providing lists of graduating students to representatives of the armed forces of the United States or to the national guard for the purposes of recruitment.

(10) A person violating the provisions of subsection (1)(b) is guilty of a misdemeanor."

**Section 3.** Section 3-15-301, MCA, is amended to read:

**"3-15-301. Who competent — duty to serve.** ~~It is the policy of this state that all qualified citizens have an obligation to serve on juries upon being summoned for jury duty, unless excused. Except as provided in 3-15-303, a person is competent to act as a juror if he~~ *the person is:* ~~a registered elector whose name appears on the most recent list of all registered electors, as prepared by the county registrar~~

(1) *18 years of age or older;*

(2) *a resident for at least 30 days of the state and of the city, town, or county in which the person is called for jury duty; and*

(3) *a citizen of the United States."*

**Section 4.** Section 3-15-402, MCA, is amended to read:

**"3-15-402. Selection of qualified persons.** (1) Subject to subsection (2), at the meeting specified in 3-15-401, the officers present, *working with the office of the secretary of state*, shall select from the most recent list of all registered electors, as prepared by the county registrar, *working with the office of the secretary of state*, 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 officers, working with the office of the secretary of state, shall then combine the resulting list with the list submitted to the clerk of the district court under [section 1], 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 ~~jury~~ *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 ~~jury~~ *combined* list for more than one court during a 1-year term.

(2) The *combined* list prepared under subsection (1) may not include the name of a person permanently excluded from jury service under 3-15-313."

**Section 5.** Section 3-15-403, MCA, is amended to read:

**“3-15-403. Lists delivered to clerk Jury lists — filing — public inspection.** (1) ~~A list of the names of the persons selected, showing the place of residence and other proper particulars regarding each of them, so far as those particulars can be conveniently ascertained, must be made out and signed by the officers or a majority of them. Within 15 days after the meeting, the~~ *The combined list prepared under 3-15-402 must be delivered by those officers the office of the secretary of state to the clerk of the district court and filed by the clerk of the district court in the clerk's 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 list 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 court and be made available for public inspection during normal business hours.

~~(3) If the clerk of court is satisfied that a person whose name is drawn is deceased or mentally incompetent or has permanently moved from the county, the name of the person must be omitted from the jury list. The reason for the omission must be entered in the minutes of the court.”~~

**Section 6.** Section 3-15-404, MCA, is amended to read:

**“3-15-404. Duty of jury commissioner — jury box or computer database.** (1) The clerk of court is the jury commissioner and may appoint a deputy pursuant to 7-4-2401.

(2) A county jury commissioner may by order establish the use of either a jury box, as provided in subsection (3), or a computer database, as provided in subsection (4), as the means for selecting jurors in the county.

(3) If a county uses a jury box for selection of jurors, the jury commissioner shall prepare and keep a jury box and contents as prescribed in this subsection. The number of each juror must be written, typed, or stamped on a slip of paper or other suitable material, identical in all respects to the slips used for the other numbers. The slips must be placed in a box of ample size to permit them to be thoroughly mixed. The box must be plainly marked “jury box”. The slips may be used as often as necessary, except that none may be used that is in any manner defaced or disfigured or so marked that it may be recognized or distinguished from the others in the jury box except by the number on the slip. The box may contain only one slip for each number corresponding to the number before the name of each juror on the jury list filed under 3-15-403.

(4) If a county uses a computer database for selection of jurors, the jury commissioner shall cause the list of jurors prepared under the provisions of ~~3-15-402~~ filed under 3-15-403 to be entered into a computerized database.

(5) *A person's name may not appear on a jury list for more than one court during a 1-year term.*

(6) *The clerk of court shall prepare a jury list for the district court or each division of the district court.*

~~(7) If the clerk of court is satisfied that a person whose name is drawn is deceased, mentally incompetent, or has permanently moved from the county, the person's name must be omitted from the jury list. The reason for the omission must be entered in the minutes of the court.”~~

**Section 7.** Section 46-17-202, MCA, is amended to read:

**“46-17-202. Formation of trial jury for justices’, municipal, and city courts.** (1) At the time of preparing the district court jury list under 3-15-404(6), the ~~county commissioners and clerk and recorder~~ clerk of the district court shall prepare a jury list for each justice’s, municipal, and city court within the county. Each list must consist of residents of the appropriate county, city, or town. The lists must be selected in any reasonable manner that ensures fairness, and each list must include a number of names sufficient to meet the annual jury requirements of the respective court. Additional lists may be prepared if required. The lists must be ~~filed~~ kept on file in the office of the clerk of the district court as provided in 3-15-403. The appropriate list must be posted in a public place in each county, city, or town, and the list must comprise the trial jury list for the ensuing year for the county, city, or town.

(2) Trial jurors must be summoned from the jury list by notifying each one orally that the person is summoned and of the time and place at which attendance is required.”

**Section 8. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 61, chapter 5, part 1, and the provisions of Title 61 apply to [section 1].

**Section 9. Effective date.** [This act] is effective October 1, 2005.

**Section 10. Applicability.** [This act] applies to combined jury lists compiled partly from the lists submitted under [section 1] by the department of justice to the clerks of the district courts on and after the second Monday of May 2006.

Approved April 21, 2003

## CHAPTER NO. 442

[HB 618]

AN ACT INCREASING TO \$200 THE FEE FOR REINSTATEMENT OF A DRIVER’S LICENSE THAT HAS BEEN REVOKED AS A RESULT OF CERTAIN OFFENSES, INCLUDING DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; PROVIDING THAT HALF OF THE FEES COLLECTED BE DEPOSITED INTO THE GENERAL FUND AND THE OTHER HALF INTO AN ACCOUNT IN THE STATE SPECIAL REVENUE FUND; AND AMENDING SECTION 61-2-107, MCA.

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

**Section 1.** Section 61-2-107, MCA, is amended to read:

**“61-2-107. License reinstatement fee to fund county drinking and driving prevention programs.** (1) Notwithstanding the provisions of any other law of the state, a driver’s license that has been suspended or revoked under 61-5-205 or 61-8-402 must remain suspended or revoked until the driver has paid to the department a fee of ~~\$100~~ \$200 in addition to any other fines, forfeitures, and penalties assessed as a result of conviction for a violation of the traffic laws of the state.

(2) The department shall deposit *one-half* of the fees collected under subsection (1) in the general fund. ~~One half of the fees must be appropriated and~~ and the other half in an account in the state special revenue fund to be used for

funding county drinking and driving prevention programs as provided in 61-2-108.”

**Section 2. Coordination instruction.** If Senate Bill No. 37 and [this act] are both passed and approved, then [this act] is void.

Approved April 21, 2003

## CHAPTER NO. 443

[HB 640]

AN ACT REVISING LOCAL GOVERNMENT BUILDING CODE AUTHORITY; ELIMINATING THE ABILITY OF A COUNTY TO DESIGNATE A PORTION OF A COUNTY OUTSIDE OF A CITY OR TOWN AS THE COUNTY JURISDICTIONAL AREA; ELIMINATING ELECTION REQUIREMENTS RELATED TO BUILDING CODES; REVISING DEFINITIONS AND THE USE OF DEFINED TERMS; PROVIDING A TRANSITION PERIOD CONCERNING JURISDICTION; AMENDING SECTIONS 13-19-106, 50-3-103, 50-60-101, 50-60-102, 50-60-106, 50-60-107, 50-60-109, 50-60-110, 50-60-115, 50-60-118, 50-60-205, 50-60-211, 50-60-212, 50-60-213, 50-60-301, 50-60-302, 50-60-303, 50-60-404, 50-60-506, 50-60-510, 50-60-604, 50-60-605, AND 50-60-607, MCA; REPEALING SECTIONS 50-60-310, 50-60-311, 50-60-312, 50-60-313, AND 50-60-314, MCA; AND PROVIDING EFFECTIVE DATES.

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

**Section 1.** Section 13-19-106, MCA, is amended to read:

**“13-19-106. General requirements for mail ballot election — ~~exception for county building code jurisdiction election.~~** A mail ballot election must be conducted substantially as follows:

(1) Official ballots must be prepared and all other initial procedures followed as otherwise provided by law, except that mail ballots are not required to have stubs.

(2) ~~(a) Except as provided in subsection (2)(b), an~~ An official ballot must be mailed to every qualified elector of the political subdivision conducting the election.

~~(b) In an election to determine whether to adopt a building code enforcement program within a county jurisdictional area, as defined in 50-60-101 and designated by a board of county commissioners pursuant to 50-60-310, an official ballot must be mailed to every record owner of real property in the county jurisdictional area.~~

(3) Each return/verification envelope must contain a form prescribed by the secretary of state for the elector to verify the accuracy of the elector's address or notify the election administrator of the elector's correct mailing address and to return the corrected address with the voted ballot in the manner provided by 13-19-306.

(4) The elector shall mark the ballot at home and place it in a secrecy envelope.

(5) The elector shall then place the secrecy envelope containing the elector's ballot in a return/verification envelope and shall return it by mailing it or



delivering it in person to a place of deposit designated by the election administrator so that it is received before a specified time on election day.

(6) Once returned, election officials shall first qualify the submitted ballot by examining the return/verification envelope to determine whether it is submitted by a qualified elector who has not previously voted.

(7) If the ballot qualifies and is otherwise valid, officials shall then open the return/verification envelope and remove the secrecy envelope, which is then voted by depositing it unopened in an official ballot box.

(8) After the close of polls on election day, voted ballots must be counted and canvassed as otherwise provided by law.”

**Section 2.** Section 50-3-103, MCA, is amended to read:

**“50-3-103. Rules promulgated by department.** (1) Rules promulgated by the department by authority of 50-3-102 must be reasonable and calculated to effect the purposes of this chapter. The rules must include but are not limited to requirements for:

(a) design, construction, installation, operation, storage, handling, maintenance, or use of structural requirements for various types of construction;

(b) building restrictions within congested districts;

(c) exit facilities from structures;

(d) fire extinguishers, fire alarm systems, and fire extinguishing systems;

(e) fire emergency drills;

(f) flue and chimney construction;

(g) heating devices;

(h) electrical wiring and equipment;

(i) air conditioning, ventilating, and other duct systems;

(j) refrigeration systems;

(k) flammable liquids;

(l) oil and gas wells;

(m) application of flammable finishes;

(n) explosives, acetylene, liquefied petroleum gas, and similar products;

(o) calcium carbide and acetylene generators;

(p) flammable motion picture film;

(q) combustible fibers;

(r) hazardous chemicals or materials;

(s) rubbish;

(t) open-flame devices;

(u) parking of vehicles;

(v) dust explosions;

(w) lightning protection;

(x) storage of smokeless powder and small arms primers; and

(y) other special fire hazards.

(2) If rules relate to building and equipment standards covered by the state *building code* or a ~~municipal~~ *county, city, or town building code*, the rules are effective upon approval of the department of labor and industry and filing with the secretary of state.

(3) Federal or other nationally recognized standards for fire protection may be adopted in whole or in part by reference.

(4) Rules must be adopted as prescribed in the Montana Administrative Procedure Act.

(5) Rules promulgated by the department may not prevent the installation of an aboveground storage tank in a community, city, or town with a population of 1,500 or less if the tank is installed in conformance with all other applicable laws and regulations.

(6) Rules promulgated by the department may not require diked areas or heat-actuated or other shutoff devices for storage tanks containing class I or class II liquids, as defined in the uniform fire code, intended only for private use on farms and ranches.

(7) A person violating any rule made under the provisions of this part is guilty of a misdemeanor."

**Section 3.** Section 50-60-101, MCA, is amended to read:

**"50-60-101. Definitions.** As used in parts 1 through 4 and 7 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Alteration" means any change, addition, or modification in construction or occupancy.

(2) "Building" means a combination of any materials, whether mobile, portable, or fixed, to form a structure and the related facilities for the use or occupancy by persons or property. The term must be construed as though followed by the words "or part or parts of a building".

(3) (a) "Building regulations" means any law, rule, resolution, regulation, ordinance, or code, general or special, or compilation of laws, rules, resolutions, regulations, ordinances, or codes enacted or adopted by the state or any municipality, including departments, boards, bureaus, commissions, or other agencies of the state or a municipality relating to the design, construction, reconstruction, alteration, conversion, repair, inspection, or use of buildings and installation of equipment in buildings.

(b) The term does not include zoning ordinances.

(4) "*City or town*" means an incorporated city or town as provided for in Title 7, chapter 2, part 41.

~~(4)~~(5) "Code enforcement program" means the plan for enforcement of the building regulations adopted by a municipality or county and includes the local building department and the staff associated with executing any aspect of the program's purposes or functions.

~~(5)~~(6) "Construction" means the original construction and equipment of buildings and requirements or standards relating to or affecting materials used, including provisions for safety and sanitary conditions.

~~(6)~~ "County jurisdictional area" means the entire county, or an area or areas within the county, designated by the board of county commissioners as subject to the county building code, excluding any area that is within the limits of an incorporated municipality.

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

(8) "Equipment" means plumbing, heating, electrical, ventilating, air conditioning, and refrigerating equipment, elevators, dumbwaiters, escalators, and other mechanical additions or installations.

(9) (a) "Factory-built building" means a factory-assembled structure or structures equipped with the necessary service connections but not made so as to be readily movable as a unit or units and designed to be used with a permanent foundation.

(b) The term does not include manufactured housing constructed after June 15, 1976, under the National Mobile Home Construction and Safety Standards Act of 1974, 42 U.S.C. 5401, et seq.

(10) "Local building department" means the agency or agencies of a ~~municipality~~ *county, city, or town* charged with the administration, supervision, or enforcement of building regulations, the approval of plans, the inspection of buildings, or the issuance of permits, licenses, certificates, and similar documents prescribed or required by state or local building regulations.

(11) "Local legislative body" means the council or commission charged with governing the ~~municipality~~ *county, city, or town*.

~~(12) "Municipal jurisdictional area" means the area within the limits of an incorporated municipality.~~

~~(13) "Municipality" means any incorporated city or town.~~

~~(14)~~ (12) "Owner" means the owner or owners of the premises or lesser estate, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a building.

~~(15)~~ (13) (a) "Primary function area" means an area of a building or facility in which a major activity for which the building or facility is designed is carried out. Primary function areas include but are not limited to a customer service lobby of a savings institution, a cafeteria dining area, and meeting rooms of a conference center.

(b) Areas that are not primary function areas include but are not limited to boiler rooms, storage rooms, employee lounges, janitorial closets, entrances, corridors, and restrooms.

~~(16)~~ (14) "Public building" means a building or facility owned or operated by a governmental entity or a private sector building or facility that is open to members of the public.

~~(17)~~ (15) "Public sidewalk" means a sidewalk located in a public right-of-way.

~~(18)~~ (16) "Recreational vehicle" means a vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use that either has its own mode of power or is mounted on or towed by another vehicle, including but not limited to a:

- (a) travel trailer;
- (b) camping trailer;
- (c) truck camper; or
- (d) motor home.

~~(19)~~ (17) "Site" means a parcel of land bounded by property lines or a designated portion of a public right-of-way.

~~(20)~~ (18) "State agency" means any state officer, department, board, bureau, commission, or other agency of this state.

~~(21)~~ (19) "State building code" means the state building code provided for in 50-60-203 or any portion of the code of limited application and any of its modifications or amendments."

**Section 4.** Section 50-60-102, MCA, is amended to read:

**"50-60-102. Applicability.** (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 ~~the municipality's or county's jurisdictional area~~ *a county, city, or town*, unless the local legislative body ~~or board of county commissioners~~ 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.

(2) Except as provided in subsection (5), the state may not enforce the state building code under 50-60-205 for the buildings referred to in subsection (1). ~~Local governments~~ *A county, city, or town that have* has made the state building code applicable to the buildings referred to in subsection (1) may enforce within ~~their jurisdictional areas~~ *the area of its jurisdiction* the state building code as adopted by the ~~respective local government~~ *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;

(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) 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) 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.”

**Section 5.** Section 50-60-106, MCA, is amended to read:

**“50-60-106. Powers and duties of municipalities, counties, cities, and towns.** (1) The examination, approval, or disapproval of plans and specifications, the issuance and revocation of building permits, licenses, certificates, and similar documents, the inspection of buildings, and the administration and enforcement of building regulations within the ~~municipal jurisdictional area~~ *limits of a city or town* are the responsibility of the ~~municipalities~~ *city or town* of the state. *The examination, approval, or disapproval of plans and specifications, the issuance and revocation of building permits, licenses, certificates, and similar documents, the inspection of buildings, and the administration and enforcement of building regulations within the portion of a county that is covered by a county building code are the responsibility of the county.*

(2) Each ~~municipality or~~ *county, city, or town* certified under 50-60-302 shall, within its jurisdictional area:

(a) examine, approve, or disapprove plans and specifications for the construction of any building, the construction of which is pursuant or purports to be pursuant to the applicable provisions of the state *building code* or ~~municipal~~ *county, city, or town* building code, and direct the inspection of the buildings during and in the course of construction;

(b) require that construction of buildings be in accordance with the applicable provisions of the state *building code* or ~~municipal~~ *county, city, or town* building code, subject to the powers of variance or modification granted to the department;

(c) make available to building contractors at a price that is commensurate with reproduction costs a checklist devised by the department pursuant to 50-60-118 for single-family dwellings and provide to contractors who attach a completed checklist to the plans submitted for examination the relevant building permit or notice of plan disapproval within 10 working days of the contractor’s submission;

(d) during and in the course of construction, order in writing the remedying of any condition found to exist in, on, or about any building that is being constructed in violation of the ~~applicable~~ state *building code* or ~~municipal~~ *county, city, or town* building code. Orders may be served upon the owner or the owner’s authorized agent personally or by sending by certified mail a copy of the order to the owner or the owner’s authorized agent at the address set forth in the application for permission for the construction of the building. A local building department, by action of an authorized officer, may grant in writing time as may be reasonably necessary for achieving compliance with the order. For the purposes of this subsection (2)(d), the phrase “during and in the course of construction” refers to the construction of a building until all necessary building permits have been obtained and the municipality or county has issued formal written approvals or has issued a certificate of occupancy for the building.

- (e) issue certificates of occupancy as provided in 50-60-107;
- (f) issue permits, licenses, and other required documents in connection with the construction of a building;
- (g) ensure that all construction-related fees or charges imposed and collected by the municipality or county are necessary, reasonable, and uniform and are:
  - (i) except as provided in subsection (2)(g)(iii), used only for building code enforcement, which consists of those necessary and reasonable costs directly and specifically identifiable for the enforcement of building codes, plus indirect costs charged on the same basis as other local government proprietary funds not paying administrative charges as direct charges. If indirect costs are waived for any local government proprietary fund, they must also be waived for the program established in this section. Indirect charges are limited to the charges that are allowed under federal cost accounting principles that are applicable to a local government.
  - (ii) reduced if the amount of the fees or charges accumulates above the amount needed to enforce building codes for 12 months. The excess must be placed in a reserve account and may only be used for building code enforcement. Collection and expenditure of fees and charges must be fully documented.
  - (iii) allocated and remitted to the department, in an amount not to exceed 0.5% of the building fees or charges collected, for the building codes education program established in 50-60-116.

(3) Each ~~municipality or county~~ *county, city, or town with a building code enforcement program that has been certified under 50-60-302* may, within ~~its jurisdiction~~ *the area of its jurisdiction*:

- (a) make, amend, and repeal rules for the administration and enforcement of the provisions of this section and for the collection of fees and charges related to construction;
- (b) prohibit the commencement of construction until a permit has been issued by the local building department after a showing of compliance with the requirements of the applicable provisions of the state *building code* or ~~municipal county, city, or town~~ *building code*; and
- (c) enter into a private contract with the owner or builder of a building that is not or will not be within the jurisdiction of the ~~municipality or county, city, or town~~ *under which the municipality or county, city, or town will provide reviews, inspections, orders, and certificates of occupancy for a fee and under conditions agreed upon by the parties. Municipal or county County, city, or town powers of enforcement may not be exercised.*

**Section 6.** Section 50-60-107, MCA, is amended to read:

**“50-60-107. Certificate of occupancy.** (1) A certificate of occupancy for a building constructed in accordance with the provisions of the state *building code* or ~~municipal county, city, or town~~ *building code* ~~shall~~ *must* certify that the building conforms to the requirements of the building regulations applicable to it.

(2) Every certificate of occupancy, unless and until set aside or vacated by a court of competent jurisdiction, is binding and conclusive upon all ~~municipal county, city, or town~~ *agencies as to all matters set forth, and no an order, directive, or requirement at variance therewith with the certificate of occupancy*

may *not* be made or issued by any other state agency or ~~municipal~~ county, city, or town agency.”

**Section 7.** Section 50-60-109, MCA, is amended to read:

**“50-60-109. Injunctions authorized.** (1) The construction or use of the building in violation of any provision of the state *building code* or ~~municipal~~ county, city, or town building code or any lawful order of a state building official or a local building department may be enjoined by a judge of the district court in the judicial district in which the building is located.

(2) This section ~~will be~~ *is* governed by the Montana Rules of Civil Procedure.”

**Section 8.** Section 50-60-110, MCA, is amended to read:

**“50-60-110. Violation a misdemeanor.** Any person served with an order pursuant to the provisions of parts 1 through 4 who fails to comply with the order not later than 30 days after service or within the time fixed by the department or a local building department for compliance, whichever is the greater, or any owner, builder, architect, tenant, contractor, subcontractor, construction superintendent, their agents, or any person taking part or assisting in the construction or use of any building who knowingly violates any of the applicable provisions of the state building code or a ~~municipal~~ county, city, or town building code is guilty of a misdemeanor.”

**Section 9.** Section 50-60-115, MCA, is amended to read:

**“50-60-115. Building codes council — purpose and structure.** (1) There is a building codes council for the purpose of assisting the department with the application, implementation, and interpretation of the state building code and building codes adopted by ~~local governments~~ counties, cities, or towns. The council shall work cooperatively with the department and with representatives of the construction industry, as well as members of the interested public, to harmonize building codes and related rules with both the needs of the construction industry and the public interest in efficiency, cost-effectiveness, and safety.

(2) The council consists of 11 members appointed by the governor, unless otherwise specified, as follows:

- (a) a practicing architect licensed in Montana;
- (b) a practicing professional engineer licensed in Montana;
- (c) a representative from the building contractor industry;
- (d) a ~~municipal~~ county, city, or town building inspector;
- (e) a representative of the manufactured housing industry;
- (f) a member of the general public who does not hold public office and who does not represent the same industry or agency as another council member;
- (g) the director of the department of health and human services or the director’s designee;
- (h) a licensed electrician selected by the board of electricians;
- (i) a licensed plumber selected by the board of plumbers;
- (j) the state fire marshal or the fire marshal’s designee; and
- (k) a representative of the home building industry.

(3) The appointed council members serve at the pleasure of the governor for terms of 3 years.

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

(5) The council and its members are entitled to compensation as provided in 2-15-122.”

**Section 10.** Section 50-60-118, MCA, is amended to read:

**“50-60-118. Examination of single-family dwelling plans — statewide approval for model plans — fee adjustments — mandatory checklist.** (1) The department shall accept for examination and approval or disapproval all model construction plans for single-family dwellings submitted to the department.

(2) Once a model construction plan has been approved, the department shall indicate in writing on the approved plan that the plan is acceptable on a statewide basis and that no further examination is warranted except with respect to:

- (a) zoning;
- (b) footings, foundations, and basements;
- (c) curbs;
- (d) gutters;
- (e) landscaping;
- (f) utility connections;
- (g) street requirements;
- (h) sidewalks; and
- (i) other requirements specifically related to the exterior of the building.

(3) Local building departments shall reduce plan examination fees commensurate with the reduced time and effort expended resulting from the department’s examination provided for in subsection (1).

(4) This section may not be construed to reduce the requirements for obtaining permits for onsite inspection of the residence under construction pursuant to 50-60-106.

(5) (a) The department shall devise a checklist for the examination of single-family dwelling construction plans by the department and by the building code enforcement officials of ~~municipalities and~~ counties, *cities, and towns*.

(b) The checklist must be based upon the most recently adopted edition of the council of American building officials One and Two Family Dwelling Code, as amended.

(c) The checklist is subject to review and amendment by the building codes council provided for in 50-60-115.

(d) The checklist must be made available to building contractors at a price that is commensurate with reproduction costs, and a building contractor who uses the checklist and attaches it to the plans that the contractor submits to the department or a ~~municipality or county,~~ *city, or town* for examination is entitled to receive the relevant building permit or notice of disapproval within 10 days of submission of the completed checklist.”

**Section 11.** Section 50-60-205, MCA, is amended to read:



**“50-60-205. When state building code applies — health care facility and public health center doors.** (1) If a ~~municipality or county, city, or town~~ does not adopt a building code as provided in 50-60-301, the state building code applies within the ~~municipal or county, city, or town jurisdictional area~~ and the state will enforce the code in these areas.

(2) Any provision of a building code requiring the installation or maintenance of self-closing or automatic closing corridor doors to patient rooms does not apply to health care facilities as defined in 50-5-101 or to a public health center as defined in 7-34-2102.”

**Section 12.** Section 50-60-211, MCA, is amended to read:

**“50-60-211. Inspections.** (1) The construction of a public building or alteration to a primary function area of a public building must be inspected for physical accessibility to persons with disabilities.

(2) The inspection must include the building site, including applicable exterior features, such as parking areas, passenger loading zones, private sidewalks, and the accessibility from adjacent public sidewalks, public streets, and public transportation stops.

(3) (a) The inspections must be completed by state building inspectors in areas not covered by a ~~municipal or county, city, or town~~ building code.

(b) (i) ~~Municipalities and counties~~ *Counties, cities, and towns* that have adopted a building code may assign appropriately trained personnel to perform site inspections conducted pursuant to this part.

(ii) ~~Municipalities and counties~~ *Counties, cities, and towns* conducting inspections pursuant to this section must have an enforcement mechanism in place to ensure compliance with the accessibility provisions of this part, including but not limited to denying building permits or certificates of occupancy, injunctions, or other civil enforcement procedures allowed by law.

(4) Existing public buildings that are not undergoing an alteration to a primary function area are not subject to the inspection provisions of this section.”

**Section 13.** Section 50-60-212, MCA, is amended to read:

**“50-60-212. Disclaimer.** A building permit or certificate of occupancy issued by the state or by a ~~municipality or county, city, or town~~ must contain a statement that reads: “Compliance with the requirements of the state building code for physical accessibility to persons with disabilities does not necessarily guarantee compliance with the Americans with Disabilities Act of 1990, the Rehabilitation Act of 1973, the Fair Housing Amendments Act of 1988, Title 49, chapter 2, commonly known as the Montana Human Rights Act, or other similar federal, state, or local laws that mandate accessibility to commercial construction or multifamily housing.””

**Section 14.** Section 50-60-213, MCA, is amended to read:

**“50-60-213. Accessible exterior routes — exceptions.** (1) Except as provided in subsection (6), for a public building, an accessible exterior route must be provided from public transportation stops located within the boundary of the building site, from accessible parking and accessible passenger loading zones within the boundaries of the building site, and from public sidewalks that are immediately adjacent to the building site, if sidewalks exist, to the building’s accessible entrance served by the transportation stops, parking and loading zones, or sidewalks.

(2) (a) When more than one public building is located on a site, at least one accessible exterior route must connect accessible elements, facilities, and buildings that are on the site.

(b) For the purposes of 50-60-214 and this section, "element" means an architectural or mechanical component of a public building, facility, space, or site and includes but is not limited to telephones, curb ramps, doors, drinking fountains, seating, and water closets.

(3) An accessible exterior route between accessible public parking and an accessible building entrance must be the most practical direct route.

(4) (a) A person or entity constructing a public building is not required to fully comply with the provisions of this section if the person can demonstrate that due to characteristics of the terrain, it is structurally impractical to fully comply.

(b) Full compliance may be considered structurally impractical only in those rare circumstances when the unique characteristics of the terrain prevent the incorporation of accessibility features.

(c) The person or entity shall comply with the provisions of this section to the extent that compliance is not structurally impractical.

(d) The department shall adopt rules to assist all interested parties involved in the design, construction, and inspection processes in determining structural impracticality.

(5) (a) If a paved parking lot is not planned or present for a public building, a person or entity constructing the public building is not required to pave the entire lot, unless otherwise required by law, ordinance, or applicable building code, but shall provide pavement or a similarly firm, stable, and slip-resistant surface for parking spaces designated for persons with disabilities.

(b) An accessible exterior route with a suitably firm, stable, and slip-resistant surface must be provided from the designated parking spaces to an accessible building or facility entrance.

(c) The total number of designated accessible parking spaces in a parking lot or area must be the number provided for in the applicable state *building code* or ~~local government~~ *county, city, or town building code*.

(6) An accessible route is not required in cases where there is not a pedestrian route for the general public.

(7) The state, ~~municipalities, and~~ *counties, cities, and towns* shall use the same accessibility standards."

**Section 15.** Section 50-60-301, MCA, is amended to read:

**"50-60-301. ~~Municipal and county~~ *County, city, and town building codes authorized — health care facility and public health center doors — fee adjustment for model plans.*** (1) The local legislative body of a ~~municipality or county, city, or town~~ *municipality or county, city, or town jurisdictional area* by an ordinance ~~or resolution, as appropriate~~.

(a) adopting a building code; or

(b) authorizing the adoption of a building code by administrative action.

(2) A ~~municipal or~~ *county, city, or town building code* may include only codes adopted by the department.

(3) Any provision of a building code requiring the installation or maintenance of self-closing or automatic closing corridor doors to patient rooms does not apply to health care facilities, as defined in 50-5-101, or to a public health center, as defined in 7-34-2102.

(4) (a) When the same single-family dwelling plan is constructed at more than one site, the ~~municipality or~~ county, city, or town shall, after the first examination of the plan, adjust the required plan fee to reflect only the cost of reviewing requirements pertaining to the review of:

- (i) zoning;
- (ii) footings, foundations, and basements;
- (iii) curbs;
- (iv) gutters;
- (v) landscaping;
- (vi) utility connections;
- (vii) street requirements;
- (viii) sidewalks; and
- (ix) other requirements related specifically to the exterior of the building.

(b) If a building contractor alters the single-family dwelling plan referred to in subsection (4)(a) in a fashion that substantially affects the building code requirements, the ~~municipality or~~ county, city, or town may impose the full examination fee permitted under 50-60-106."

**Section 16.** Section 50-60-302, MCA, is amended to read:

**"50-60-302. Certification of ~~municipal and~~ county, city, or town building codes.** (1) A county, ~~or municipality~~ city, or town may not enforce a building code unless:

- (a) the code enforcement program has been certified by the department as in compliance with applicable statutes and department certification rules;
- (b) the current adopted code, a current list of fees to be imposed, and a current plan for enforcement of the code have been filed with and approved by the department; and
- (c) all inspectors inspecting or approving any installations, which if accomplished commercially require state licensure, must themselves be properly and currently state-licensed as journeymen in that craft or occupation or be certified by a nationally recognized entity for testing and certification of inspectors that is approved by the department before being permitted to inspect or approve any installations.

(2) The department shall adopt additional rules and standards governing the certification of ~~municipal and~~ county, city, and town building code enforcement programs that must include provisions for prompt revocation of certification for refusal or failure to comply with any applicable statute or rule. The department may allow a county, ~~or municipality~~ city, or town a reasonable amount of time, not to exceed 6 months, to correct identified code enforcement program deficiencies, unless the deficiencies constitute an immediate threat to the public health, safety, or welfare, in which case the department may require immediate correction. Failure to correct deficiencies within the time set by the department constitutes a basis for immediate decertification of the code enforcement program. Continued operation of a county, ~~or municipal~~ city, or

*town* code enforcement program in violation of a department order to correct deficiencies may be enjoined or subject to a writ of mandamus by a judge of the district court in the jurisdiction in which the county, ~~or municipality~~ *city, or town* is located. The rules and standards must include provisions for the department to ensure that all code enforcement program functions are being properly performed.

(3) If the certification of any local government code enforcement program is revoked for any violation or deficiency, the state resumes its original jurisdiction for state building code enforcement within the ~~municipal~~ *county, city, or town* area and the local government retains the responsibility for completion of inspections and issuance of certificates of occupancy on any incomplete construction projects previously permitted by the ~~local government~~ *county, city, or town*, unless the reason for the decertification is directly related to the protection of health, safety, and welfare of the public.

(4) If a ~~local government~~ *county, city, or town* voluntarily decertifies its code enforcement program, the department must be given written notification of the intended decertification at least 90 days prior to the date of decertification. The ~~local government~~ *county, city, or town* retains the responsibility for completion of inspections and issuance of certificates of occupancy on any incomplete construction projects permitted by the ~~local government~~ *county, city, or town* prior to decertifying its code enforcement program.”

**Section 17.** Section 50-60-303, MCA, is amended to read:

**“50-60-303. ~~Municipal and county~~ *County, city, or town appeal procedure.*** (1) If a ~~municipality or~~ *county, city, or town* adopts a building code, it shall also establish an appeal procedure by ordinance *or resolution, as appropriate*, that is acceptable to the department.

(2) If a ~~municipality or~~ *county, city, or town* does not adopt a code, appeals on the application of the state building code within the ~~municipal or~~ *county, city, or town jurisdictional area* must be made to the department.”

**Section 18.** Section 50-60-404, MCA, is amended to read:

**“50-60-404. ~~Enforcement of building construction standards for modular homes.~~** (1) The provisions of this chapter apply to factory-built modular or prebuilt homes or buildings.

(2) A ~~municipality~~ *county, city, or town* may regulate the construction of factory-built modular or prebuilt homes or buildings as provided in 50-60-106 if:

(a) the homes or buildings are constructed inside the jurisdiction of the ~~municipality~~ *county, city, or town*,

(b) the homes or buildings are sold primarily to persons in the county in which the factory is located;

(c) the factory does not manufacture more than 100 homes or buildings a year; and

(d) the ~~municipality~~ *county, city, or town* has an agency or officer assigned to inspect and enforce building construction standards.

(3) Inspection and enforcement approval given by a ~~municipality~~ *county, city, or town* under this section may be recognized and accepted by any other ~~municipality~~ *county, city, or town* of the state to which the factory-built home or building is transported for final installation. Additional inspections need not be conducted.”

**Section 19.** Section 50-60-506, MCA, is amended to read:

**“50-60-506. Exceptions to permit requirement.** (1) ~~No~~ A permit is *not* required for any minor replacement or repair work, the performance of which does not have a significant potential for creating a condition hazardous to public health and safety.

(2) ~~No~~ A permit is *not* required where the installation is exempt under the provisions of 37-69-102 or 50-60-503.

(3) ~~No~~ A state permit is *not* required whenever the installation occurs in an area governed by a ~~municipality~~ *county, city, or town* and where there is in effect a ~~municipal~~ *county, city, or town* building code ~~which that~~ covers plumbing installations and ~~which that~~ provides inspection procedures.

(4) ~~Nothing contained in this~~ This part ~~shall~~ *does not* prohibit the owner of residential property from making an installation for all sanitary plumbing and potable water supply piping without a permit ~~providing he if the owner personally does the work himself.~~

(5) The provisions of this part do not apply to regularly employed maintenance personnel doing maintenance work on the business premises of their employer unless *the work* is subject to the permit provisions of this part.”

**Section 20.** Section 50-60-510, MCA, is amended to read:

**“50-60-510. Inspections to ensure compliance.** All plumbing and drainage systems may be inspected by the department of labor and industry or an authorized representative or ~~by a municipality or~~ *county, city, or town* certified to perform an inspection pursuant to 50-60-302 in order to ensure compliance with the requirements of the state plumbing code. As part of any inspection, the inspector shall request proof of licensure from any person who is required to be licensed who is involved with or, in the inspector’s judgment, appears to be involved with plumbing activities if the person is on the site. The inspector shall report any instance of license violation to the inspector’s employing agency, and the employing agency shall in turn report the violation to the board of plumbers.”

**Section 21.** Section 50-60-604, MCA, is amended to read:

**“50-60-604. Inspections — electrical permits — fees.** The department of labor and industry or an authorized representative or a ~~municipality or~~ *county, city, or town* certified to perform an inspection pursuant to 50-60-302 shall inspect electrical installations, issue electrical permits for these installations, and establish and charge a reasonable and uniform fee for the inspections. The fee must be commensurate with the expense of providing the inspection and with appropriations for other purposes. As part of any inspection, the inspector shall require proof of licensure from any person who is required to be licensed who is involved with or, in the inspector’s judgment, appears to be involved with electrical installations if the person is on the site. The inspector shall report any instance of license violation to the inspector’s employing agency, and the employing agency shall in turn report the violation to the board of electricians.”

**Section 22.** Section 50-60-605, MCA, is amended to read:

**“50-60-605. Power supplier not to energize installation without electrical permit.** Individuals, firms, cooperatives, corporations, or municipalities selling electricity are power suppliers. Except for temporary connections that the department of labor and industry may authorize by rule for

a period not exceeding 14 days without a preconnection inspection, power suppliers may not connect with or energize an electrical installation under this part unless the owner or a licensed electrical contractor has delivered to the power supplier an electrical permit covering the installation, issued by the department of labor and industry or a ~~municipality or~~ county, city, or town certified to enforce the electrical code pursuant to 50-60-302.”

**Section 23.** Section 50-60-607, MCA, is amended to read:

**“50-60-607. Energizing electrical installation without permit — misdemeanor.** Any person, partnership, company, firm, association, or corporation, other than a power supplier, that energizes an electrical installation under this part for which an electrical permit has not been issued by the department of labor and industry or a ~~municipality or~~ county, city, or town certified to enforce the electrical code pursuant to 50-60-302 is guilty of a misdemeanor.”

**Section 24. Area of applicability of county, city, or town building code — enforcement.** (1) A city or town that adopts a building code under this chapter may enforce its building code only within the incorporated limits of the city or town.

(2) A county may adopt a building code under this chapter on a countywide basis unless a city or town within the county has adopted a building code. If a city or town within the county has adopted a building code, then the county may not enforce the county building code in that city or town.

(3) A county, city, or town may contract for the enforcement of its building code.

**Section 25. Transition.** (1) A municipality is responsible for completing inspections that are required for those building, electrical, plumbing, and mechanical permits issued by the municipality in an extended jurisdictional area prior to October 1, 2003.

(2) A project in an extended jurisdictional area that required a building permit prior to October 1, 2003, is subject to city or town jurisdiction until the project is completed. A municipality may not apply its building code to a new project after October 1, 2003.

(3) A county that has not adopted a building code prior to [the effective date of this section] may adopt a building code, but the building code may not be effective before October 1, 2003.

**Section 26. Repealer.** Sections 50-60-310, 50-60-311, 50-60-312, 50-60-313, and 50-60-314, MCA, are repealed.

**Section 27. Codification instruction.** [Section 24] is intended to be codified as an integral part of Title 50, chapter 60, part 3, and the provisions of Title 50, chapter 60, part 3, apply to [section 24].

**Section 28. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective October 1, 2003.

(2) [Section 25 and this section] are effective on passage and approval.

Approved April 21, 2003

**CHAPTER NO. 444**

[HB 648]

AN ACT PROVIDING THAT A REPRODUCTIVE TECHNOLOGY BUSINESS HAS A LIEN ON ANIMAL EMBRYOS OR SEMEN UNTIL THE AMOUNT DUE FOR SERVICES IS PAID; DEFINING "REPRODUCTIVE TECHNOLOGY BUSINESS"; PROVIDING THAT A LIEN CREATED UNDER THE AGISTERS' LIEN LAWS BY A REPRODUCTIVE TECHNOLOGY BUSINESS MAY NOT TAKE PRECEDENCE OVER OTHER LIENS UNLESS THE REPRODUCTIVE TECHNOLOGY BUSINESS PROVIDES NOTICE TO OTHER LIENHOLDERS OR SECURED PARTIES WITHIN 30 DAYS FROM THE TIME OF HARVESTING OR COLLECTING THE EMBRYOS OR SEMEN; AMENDING SECTIONS 71-3-1201 AND 71-3-1202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Definition.** For the purposes of this part, "reproductive technology business" means a business that collects, processes, packages, and stores embryos or semen from animals or provides breeding services for compensation.

**Section 2.** Section 71-3-1201, MCA, is amended to read:

**"71-3-1201. Who may have lien — agisters' lien — lien for service — towing and storage lien.** (1) (a) If there is an express or implied contract for keeping, feeding, herding, pasturing, or ranching stock, a ~~ranchman~~ rancher, farmer, agister, herder, hotelkeeper, livery, ~~or~~ stablekeeper, or reproductive technology business to whom any horses, mules, cattle, sheep, hogs, or other stock are entrusted has a lien upon the stock for the amount due for keeping, feeding, herding, pasturing, or ranching the stock or for providing a service listed in subsection (1)(b) and may retain possession of the stock until the sum due is paid.

(b) If there is an express or implied contract for collecting, processing, packaging, or storing embryos or semen from livestock provided for in this subsection (1), a reproductive technology business to whom embryos or semen is entrusted and who still has possession has a lien upon the embryos or semen for the amount due for collecting, processing, packaging, or storing the embryos or semen and may retain possession of the embryos or semen until the sum due is paid.

(2) Every person who, while lawfully in possession of an article of personal property, renders any service to the owner or lawful claimant of the article by labor or skill employed for the making, repairing, protection, improvement, safekeeping, carriage, towing, or storage of the article or tows or stores the article as directed under authority of law has a special lien on it. The lien is dependent on possession and is for the compensation, if any, that is due to the person from the owner or lawful claimant for the service and for material, if any, furnished in connection with the service. If the service is towing or storage, the lien is for the reasonable cost of the towing or storage."

**Section 3.** Section 71-3-1202, MCA, is amended to read:

**"71-3-1202. Priority.** (1) Subject to subsection (4), the ~~lien hereby~~ created ~~shall~~ may not take precedence over perfected security interests under the Uniform Commercial Code—Secured Transactions or other recorded liens on the property involved unless, within 30 days from the time of receiving the

property, the person desiring to assert a lien ~~thereon shall give upon the property~~ gives notice in writing to ~~said the~~ secured party or other lienholder, stating ~~his the~~ intention to assert a lien on ~~said the~~ property, under the terms of this part, and stating the nature and approximate amount of the work performed or feed or other services furnished or intended to be performed or furnished ~~therefor~~.

(2) ~~Such service~~ Service may be made either by personal service or by mailing by registered or certified mail a copy of ~~said the~~ notice to the secured party or other lienholder at ~~his the~~ last-known post-office address. ~~Said service shall~~ Service must be ~~deemed considered~~ complete upon the deposit of the notice in the post office.

(3) Within 20 days after the date of ~~such~~ mailing or 10 days after ~~such~~ personal service, the secured party or other lienholder or ~~his the~~ secured party's or other lienholder's representative ~~shall have~~ has the right to take possession of ~~said the~~ property upon payment of the amount of the lien ~~then accrued~~. A failure on the part of ~~such the~~ secured party or other lienholder ~~so to do shall constitute to take possession of the property constitutes~~ a waiver of the priority of ~~such the~~ security interest or other lien over the lien created by this part.

(4) *With regard to a reproductive technology business, the lien created may not take precedence over perfected security interests under the Uniform Commercial Code—Secured Transactions or other recorded liens on the embryos or semen involved unless, within 30 days from the time of harvesting or collecting the embryos or semen, the person desiring to assert a lien upon the embryos or semen gives notice in writing to the secured party or other lienholder stating the intention to assert a lien on the embryos or semen, under the terms of this part, and stating the nature and approximate amount of the work performed or other services furnished or intended to be performed or furnished."*

**Section 4. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 71, chapter 3, part 12, and the provisions of Title 71, chapter 3, part 12, apply to [section 1].

**Section 5. 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 6. Effective date.** [This act] is effective on passage and approval.

Approved April 21, 2003

## CHAPTER NO. 445

[HB 653]

AN ACT AUTHORIZING THE GRAIN DEPOSITOR TO STATE A PREFERENCE OF GRADING FACILITY THROUGH A WRITTEN AGREEMENT; PROVIDING THAT THE OPTIONS PROVIDED FOR GRADING FACILITIES IN THE WRITTEN AGREEMENT MUST INCLUDE BUT MAY NOT BE LIMITED TO THE STATE GRAIN LAB; PROVIDING THAT THE WRITTEN AGREEMENT MUST SPECIFY THE TIME PERIOD TO WHICH THE AGREEMENT APPLIES; PROVIDING THAT ALL FEES AND OTHER CHARGES ASSOCIATED WITH THE GRAIN SAMPLE ANALYSIS MUST REFLECT AS NEARLY AS POSSIBLE THE ACTUAL COST OF THE SERVICES; REQUIRING A WAREHOUSE OPERATOR OR



COMMODITY DEALER TO POST FEES, INCLUDING ANTICIPATED SHIPPING AND HANDLING FEES; AMENDING SECTIONS 80-4-711 AND 80-4-721, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 80-4-711, MCA, is amended to read:

**“80-4-711. Agricultural commodity sampling — appeal procedure.**

(1) At the time of delivery of an agricultural commodity to a warehouse operator or commodity dealer for storage or sale, each warehouse operator or commodity dealer shall take a representative sample from each load of agricultural commodity delivered and preserve the sample in a moistureproof container with the owner's name marked on the container. *A written agreement must be given to the depositor authorizing the depositor to state a preference of grading facility. The options provided for grading facilities in the agreement must include but may not be limited to the state grain laboratory. The written agreement must specify the time period to which the agreement applies. If the state grain lab is chosen as the grading facility, a composite sample consisting of a minimum of 1 1/2 quarts or 1,050 grams of the representative sample must, upon written request of the depositor,* be submitted directly to the state grain laboratory for analysis as to grade, dockage, protein, and other factors that the laboratory is able to analyze that affect the purchase price. The warehouse operator or commodity dealer shall retain a minimum of 1 1/2 quarts or 1,050 grams of the remaining sample for 60 days.

*(2) All fees and other charges associated with the grain sample analysis must reflect as nearly as possible the actual cost of the services.*

~~(2)~~(3) If a request for a state grain laboratory analysis is not made pursuant to subsection (1) and the depositor, warehouse operator, or commodity dealer is dissatisfied with the results of a private analysis, the depositor, warehouse operator, or commodity dealer may appeal to the state grain laboratory. When an appeal is made, the warehouse operator or commodity dealer shall submit 1 1/2 quarts or 1,050 grams of the representative sample to the state grain laboratory for appeal analysis.

~~(3)~~(4) If the depositor, warehouse operator, or commodity dealer is dissatisfied with the results of a state grain laboratory analysis, as provided in subsection (1) or ~~(2)~~ (3), the depositor, warehouse operator, or commodity dealer may appeal to the FGIS, United States department of agriculture. A FGIS appeal must be made within 10 working days of the state grain laboratory's analysis. The sample for FGIS appeal must be a portion of that agricultural commodity retained by the state grain laboratory when it conducted its analysis. The results on the state grain laboratory appeal sample are final and binding. In the absence of an appeal to FGIS or in the case of an agricultural commodity for which there are no FGIS standards, the state grain laboratory's analysis is final and binding.

~~(4)~~(5) Each warehouse operator or commodity dealer shall post in a conspicuous place a placard, issued by the department, stating the procedures provided for in this section- *and the fees established in 80-4-721. The department shall provide space on the placard on which the warehouse operator or commodity dealer is required to list anticipated shipping and handling fees.*

~~(5)~~(6) All samples submitted for analysis are the property of the state grain laboratory and subject to its disposition.

~~(6)~~(7) An agricultural commodity purchased for resale as seed is exempt from the requirements of this section.

~~(7)~~(8) A producer of malting barley may by contract waive the right to submit a sample to the state grain laboratory provided in this section.”

**Section 2.** Section 80-4-721, MCA, is amended to read:

**“80-4-721. Fees for inspection, testing, and weighing agricultural commodities — disposition — investment.** (1) The department shall by rule fix the fees for inspection, testing, and weighing of agricultural commodities.

(2) All fees and other charges fixed by rule, including fees for the inspection, grading, weighing, and protein testing of agricultural commodities, must reflect as nearly as possible the actual cost of the services.

(3) All ~~these~~ fees and charges must be paid to the department and deposited with the state treasurer. The state treasurer shall place all money in the state special revenue fund. Fees deposited in the state special revenue fund must be used to pay approved claims for expenses incurred in inspecting, grading, weighing, and protein testing of agricultural commodities.

(4) The department may direct the board of investments to invest funds from the state special revenue fund pursuant to the provisions of the unified investment program for state funds. The income from the investments must be credited to the proper department account in the state special revenue fund.

(5) *All fees collected under this part must be expended for the purposes of this part as provided in Article XII, section 1, of the Montana constitution.*”

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

Approved April 22, 2003

## CHAPTER NO. 446

[HB 667]

AN ACT INCLUDING PONZI SCHEMES IN THE LAW CRIMINALIZING THE CONDUCT OR PROMOTION OF PYRAMID PROMOTIONAL SCHEMES; INCREASING THE PENALTIES FOR OPERATING A PYRAMID PROMOTIONAL SCHEME; AND AMENDING SECTIONS 30-10-324 AND 30-10-325, MCA.

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

**Section 1.** Section 30-10-324, MCA, is amended to read:

**“30-10-324. Definitions.** As used in 30-10-324 through 30-10-326, the following definitions apply:

(1) (a) “Compensation” means the receipt of money, a thing of value, or a financial benefit.

(b) Compensation does not include:

(i) payments to a participant based upon the sale of goods or services by the participant to third persons when the goods or services are purchased for actual use or consumption; or

(ii) payments to a participant based upon the sale of goods or services to the participant that are used or consumed by the participant.

(2) (a) "Consideration" means the payment of money, the purchase of goods or services, or the purchase of intangible property.

(b) Consideration does not include:

(i) the purchase of goods or services furnished at cost that are used in making sales and that are not for resale; or

(ii) a participant's time and effort expended in the pursuit of sales or in recruiting activities.

(3) (a) "Multilevel distribution company" means a person that:

(i) sells, distributes, or supplies goods or services through independent agents, contractors, or distributors at different levels of distribution;

(ii) may recruit other participants in the company; and

(iii) is eligible for commissions, cross-commissions, override commissions, bonuses, refunds, dividends, or other consideration that is or may be paid as a result of the sale of goods or services or the recruitment of or the performance or actions of other participants.

(b) The term does not include an insurance producer, real estate broker, or salesperson or an investment adviser, investment adviser representative, broker-dealer, or salesperson, as defined in 30-10-103, operating in compliance with this chapter.

(4) "Participant" means a person involved in a sales plan or operation.

(5) "Person" means an individual, corporation, partnership, limited liability company, or other business entity.

(6) (a) "Pyramid promotional scheme" means a sales plan or operation in which a participant gives consideration for the opportunity to receive compensation derived primarily from obtaining the participation of other persons in the sales plan or operation rather than from the sale of goods or services by the participant or the other persons induced to participate in the sales plan or operation by the participant.

(b) *A pyramid promotional scheme includes a Ponzi scheme, in which a person makes payments to investors from money obtained from later investors, rather than from any profits or other income of an underlying or purported underlying business venture.*

~~(b)~~(c) A pyramid promotional scheme does not include a sales plan or operation that:

(i) subject to the provisions of subsection (6)(b)(v), provides compensation to a participant based primarily upon the sale of goods or services by the participant, including goods or services used or consumed by the participant, and not primarily for obtaining the participation of other persons in the sales plan or operation and that provides compensation to the participant based upon the sale of goods or services by persons whose participation in the sales plan or operation has been obtained by the participant;

(ii) does not require a participant to purchase goods or services in an amount that unreasonably exceeds an amount that can be expected to be resold or consumed within a reasonable period of time;

(iii) is authorized to use a federally registered trademark or servicemark that identifies the company promoting the sales plan or operation, the goods or services sold, or the sales plan or operation;

(iv) (A) provides each person joining the sales plan or operation with a written agreement containing or a written statement describing the material terms of participating in the sales plan or operation;

(B) allows a person at least 15 days to cancel the person's participation in the sales plan or operation plan; and

(C) provides that if the person cancels participation within the time provided and returns any required items, the person is entitled to a refund of any consideration given to participate in the sales plan or operation; and

(v) (A) provides for, upon the request of a participant deciding to terminate participation in the sales plan or operation, the repurchase, at not less than 90% of the amount paid by the participant, of any currently marketable goods or services sold to the participant within 12 months of the request that have not been resold or consumed by the participant; and

(B) if disclosed to the participant at the time of purchase, provides that goods or services are not considered currently marketable if the goods have been consumed or the services rendered or if the goods or services are seasonal, discontinued, or special promotional items. Sales plan or operation promotional materials, sales aids, and sales kits are subject to the provisions of this subsection (6)(b)(v) if they are a required purchase for the participant or if the participant has received or may receive a financial benefit from their purchase."

**Section 2.** Section 30-10-325, MCA, is amended to read:

**"30-10-325. Operating pyramid promotional scheme unlawful.** (1) A person may not conduct or promote or cause to be conducted or promoted a pyramid promotional scheme.

(2) A person who *willfully* violates the provisions of subsection (1) shall, *for each participant giving consideration*, be fined an amount not more than ~~\$10,000~~ \$100,000 or be imprisoned for not more than 10 years, or both.

(3) *A person who violates the provisions of subsection (1) shall, for each participant giving consideration, be assessed a civil penalty in an administrative proceeding in an amount not to exceed \$10,000.*"

Approved April 21, 2003

## CHAPTER NO. 447

[HB 676]

AN ACT CLARIFYING THE DEFINITION OF "PROJECT" UNDER THE NATURAL STREAMBED AND LAND PRESERVATION ACT OF 1975; AMENDING SECTION 75-7-103, 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 75-7-103, MCA, is amended to read:

**"75-7-103. Definitions.** As used in this part, the following definitions apply:

(1) "Applicant" means any person presenting notice of a project to the supervisors.

(2) "Department" means the Montana department of fish, wildlife, and parks.

(3) "District" means:

(a) a conservation district under Title 76, chapter 15, in which the project will take place;

(b) a grass conservation district under Title 76, chapter 16, where a conservation district does not exist; or

(c) the board of county commissioners in a county where a district does not exist.

(4) "Person" means any individual, corporation, firm, partnership, association, or other legal entity not covered under 87-5-502.

(5) (a) "Project" means a physical alteration or modification *that results in a change in the state of a stream in the state of Montana that results in a change in the state of the stream natural, perennial-flowing stream or river, its bed, or its immediate banks.*

(b) Project does not include:

(i) an activity for which a plan of operation has been submitted to and approved by the district. Any modification to the plan must have prior approval of the district.

(ii) customary and historic maintenance and repair of existing irrigation facilities that do not significantly alter or modify the stream in contravention of 75-7-102; or

(iii) *livestock grazing activities.*

(6) "Stream" means any natural, perennial-flowing stream or river, its bed, and its immediate banks except a stream or river that has been designated by district rule as not having significant aquatic and riparian attributes in need of protection or preservation under 75-7-102.

(7) "Supervisors" means the board of supervisors of a conservation district, the directors of a grass conservation district, or the board of county commissioners where a proposed project is not within a district.

(8) "Team" means one representative of the supervisors, one representative of the department, and the applicant or the applicant's representative.

(9) "Written consent of the supervisors" means a written decision of the supervisors approving a project and specifying activities authorized to be performed in completing the project."

**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 all notices of projects pending before a conservation district on [the effective date of this act].

Approved April 21, 2003

## CHAPTER NO. 448

[HB 681]

AN ACT PROVIDING FOR THE LICENSURE OF MEDICATION AIDES;  
DEFINING "MEDICATION AIDE"; PROVIDING THE BOARD OF NURSING

AUTHORITY TO ESTABLISH QUALIFICATIONS; PROVIDING THAT MEDICATION AIDES MAY PRACTICE ONLY IN PERSONAL-CARE FACILITIES AND UNDER THE GENERAL SUPERVISION OF A LICENSED NURSE; AND AMENDING SECTIONS 37-8-101, 37-8-102, AND 37-8-202, MCA.

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

**Section 1.** Section 37-8-101, MCA, is amended to read:

**“37-8-101. Purpose.** ~~(1)~~ In order to safeguard life and health, ~~any~~ a person practicing or offering to practice:

(1) professional nursing in this state for compensation or personal gain ~~shall be~~ is required to submit evidence that ~~he or she~~ the person is qualified to practice and ~~shall be~~ is licensed as hereinafter provided in this chapter;

~~(2) In order to safeguard life and health, any person practicing or offering to practice~~ practical nursing in this state for compensation or personal gain ~~shall be~~ is required to submit evidence that ~~he or she~~ the person is qualified to practice and ~~shall be~~ is licensed as hereinafter provided in this chapter;

~~(3) as a medication aide in this state is required to submit evidence that the person is qualified to practice and is licensed as provided in this chapter.”~~

**Section 2.** Section 37-8-102, MCA, is amended to read:

**“37-8-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) “Advanced practice registered nurse” means a registered professional nurse who has completed educational requirements related to the nurse’s specific practice role, in addition to basic nursing education, as specified by the board pursuant to 37-8-202(5)(a).

(2) “Board” means the board of nursing provided for in 2-15-1734.

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

(4) “Medication aide” means a person who uses standardized procedures in the administration of drugs, as defined in 37-7-101, in a personal-care facility that are prescribed by a physician, an advanced practice registered nurse with prescriptive authority, a dentist, an osteopath, or a podiatrist authorized by state law to prescribe drugs.

~~(4)~~(5) “Nursing education program” means any board-approved school that prepares graduates for initial licensure under this chapter. Nursing education programs for:

(a) professional nursing may be a department, school, division, or other administrative unit in a junior college, college, or university;

(b) practical nursing may be a department, school, division, or other administrative unit in a vocational-technical institution or junior college.

~~(5)~~(6) “Practice of nursing” embraces two classes of nursing service and activity, as follows:

(a) “Practice of practical nursing” means the performance for compensation of services requiring basic knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing procedures. Practical nursing practice uses standardized procedures in the observation and care of the ill, injured, and infirm, in the maintenance of health, in action to safeguard

life and health, and in the administration of medications and treatments prescribed by a physician, advanced practice registered nurse, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments. These services are performed under the supervision of a registered nurse or a physician, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments. These services may include a charge-nurse capacity in a long-term care facility that provides skilled nursing care or intermediate nursing care, as defined in 50-5-101, under the general supervision of a registered nurse.

(b) "Practice of professional nursing" means the performance for compensation of services requiring substantial specialized knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing theory as a basis for the nursing process. The nursing process is the assessment, nursing analysis, planning, nursing intervention, and evaluation in the promotion and maintenance of health, the prevention, casefinding, and management of illness, injury, or infirmity, and the restoration of optimum function. The term also includes administration, teaching, counseling, supervision, delegation, and evaluation of nursing practice and the administration of medications and treatments prescribed by physicians, advanced practice registered nurses, dentists, osteopaths, or podiatrists authorized by state law to prescribe medications and treatments. Each registered nurse is directly accountable and responsible to the consumer for the quality of nursing care rendered. As used in this subsection ~~(5)(b)~~ (6)(b):

(i) "nursing analysis" is the identification of those client problems for which nursing care is indicated and may include referral to medical or community resources;

(ii) "nursing intervention" is the implementation of a plan of nursing care necessary to accomplish defined goals."

**Section 3.** Section 37-8-202, MCA, is amended to read:

**"37-8-202. Organization — meetings — powers and duties.** (1) The board shall meet annually and shall elect from among the nine members a president and a secretary. The board shall hold other meetings when necessary to transact its business. The department shall keep complete minutes and records of the meetings and rules and orders promulgated by the board.

(2) The board may make rules necessary to administer this chapter. The board shall prescribe standards for schools preparing persons for registration and licensure under this chapter. It shall provide for surveys of schools at times it considers necessary. It shall approve programs that meet the requirements of this chapter and of the board. The department shall, subject to 37-1-101, examine and issue to and renew licenses of qualified applicants. The board shall conduct hearings on charges that may call for discipline of a licensee, revocation of a license, or removal of schools of nursing from the approved list. It shall cause the prosecution of persons violating this chapter and may incur necessary expenses for prosecutions.

(3) The board may adopt and the department shall publish forms for use by applicants and others, including license, certificate, and identity forms and other appropriate forms and publications convenient for the proper administration of this chapter. The board may fix reasonable fees for incidental services, within the subject matter delegated by this chapter.

(4) The board may participate in and pay fees to a national organization of state boards of nursing to ensure interstate endorsement of licenses.

(5) (a) The board may define the educational requirements and other qualifications applicable to recognition of advanced practice registered nurses. Advanced practice registered nurses are nurses who must have additional professional education beyond the basic nursing degree required of a registered nurse. Additional education must be obtained in courses offered in a university setting or its equivalent. The applicant must be certified or in the process of being certified by a certifying body for advanced practice registered nurses. Advanced practice registered nurses include nurse practitioners, nurse-midwives, nurse-anesthetists, and clinical nurse specialists.

(b) The board shall adopt rules regarding authorization for prescriptive authority of nurse specialists. If considered appropriate for a nurse specialist who applies to the board for authorization, prescriptive authority must be granted.

*(6) The board may establish qualifications for licensure of medication aides, including but not limited to educational requirements. The board may define levels of licensure of medication aides consistent with educational qualifications, responsibilities, and the level of acuity of the medication aides' patients. The board may limit the type of drugs that are allowed to be administered and the method of administration.*

~~(6)~~(7) The board shall establish a program to assist licensed nurses who are found to be physically or mentally impaired by habitual intemperance or the excessive use of narcotic drugs, alcohol, or any other drug or substance. The program must provide assistance to licensees in seeking treatment for substance abuse and monitor their efforts toward rehabilitation. For purposes of funding this program, the board shall adjust the license fee provided for in 37-8-431 commensurate with the cost of the program.

~~(7)~~(8) The board may adopt rules for delegation of nursing tasks by licensed nurses to unlicensed persons.

~~(8)~~(9) The board may fund additional staff, hired by the department, to administer the provisions of this chapter.”

**Section 4. Medication aide scope of practice.** A medication aide may:

(1) perform services requiring basic knowledge of medications and medication administration under specific circumstances as determined by the board by administrative rule;

(2) practice only in a licensed personal-care facility, as defined in 50-5-101; and

(3) practice only under the general supervision of a licensed professional or practical nurse.

**Section 5. Codification instruction.** [Section 4] is intended to be codified as an integral part of Title 37, chapter 8, part 4, and the provisions of Title 37, chapter 8, part 4, apply to [section 4].

**Section 6. Instructions to code commissioner.** If House Bill No. 51 and [this act] are both passed and approved, the commissioner is instructed to change the phrase “personal-care facility” to “assisted living facility” in [section 4].

Approved April 21, 2003



**CHAPTER NO. 449**

[HB 698]

AN ACT CREATING A TRAUMATIC BRAIN INJURY ADVISORY COUNCIL; CREATING A TRAUMATIC BRAIN INJURY ACCOUNT FOR PUBLIC INFORMATION AND EDUCATION ON TRAUMATIC BRAIN INJURY; ALLOWING FOR A VOLUNTARY DONATION ON MOTOR VEHICLE REGISTRATION FOR THE TRAUMATIC BRAIN INJURY FUND; AMENDING SECTION 61-3-303, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

**Section 1. Traumatic brain injury advisory council.** (1) There is a traumatic brain injury advisory council attached to the department of public health and human services for administrative purposes only as prescribed in 2-15-121.

(2) The council is composed of the following members:

(a) the director of the department of public health and human services or a designee;

(b) the superintendent of public instruction or a designee;

(c) a representative of a program that provides senior and long-term care services appointed by the director of the department of public health and human services;

(d) six members of the public, appointed by the governor, who represent:

(i) survivors of traumatic brain injury or family members of survivors of traumatic brain injury;

(ii) injury control or prevention programs; and

(iii) advocates for brain-injured persons.

(3) The public members of the advisory council shall serve 3-year terms. The initial appointments may specify a shorter length of the initial term in order to stagger the terms. Vacancies must be filled for the balance of an unexpired term. A member of the council may be reappointed.

(4) The advisory council shall meet quarterly, and the director of the department of public health and human services or a designee shall serve as presiding officer.

(5) The public members of the council shall serve without compensation but may be reimbursed as provided in 2-18-501 through 2-18-503, subject to available funding.

(6) The advisory council shall:

(a) advise and make recommendations to the department of public health and human services and other state agencies on ways to improve and develop services regarding traumatic brain injury, including coordination of services between public and private entities;

(b) encourage citizen participation through the establishment of public hearings and other types of community outreach and prevention activities;

(c) encourage and stimulate research, public awareness, education, and prevention activities; and

(d) advise the department of public health and human services on the expenditures of the traumatic brain injury account established in [section 2] and any grants made from that account.

**Section 2. Traumatic brain injury account.** (1) There is a traumatic brain injury account in the state special revenue fund for purposes of traumatic brain injury prevention, education, and support.

(2) Money in this account may be used by the department of public health and human services to fund the advisory council and to provide grants for public information and prevention education regarding traumatic brain injury.

**Section 3.** Section 61-3-303, MCA, is amended to read:

**“61-3-303. Application for registration.** (1) Each owner of a motor vehicle operated or driven upon the public highways of this state shall for each motor vehicle owned, except as otherwise provided in this section, file in the office of the county treasurer in the county where the owner permanently resides at the time of making the application or, if the vehicle is owned by a corporation or used primarily for commercial purposes, in the taxing jurisdiction of the county where the vehicle is permanently assigned an application for registration or reregistration on a form prescribed by the department. The application must contain:

(a) the name and address of the owner, giving the county, school district, and town or city within whose corporate limits the motor vehicle is taxable, if taxable, or within whose corporate limits the owner's residence is located if the motor vehicle is not taxable;

(b) the name and address of the holder of any security interest in the motor vehicle;

(c) a description of the motor vehicle, including make, year model, engine or serial number, manufacturer's model or letter, gross weight, declared weight on all trucks for which the manufacturer's rated capacity is 1 ton or less, and type of body and, if a truck, the manufacturer's rated capacity;

(d) the declared weight on all trailers operating intrastate, except travel trailers or trailers and semitrailers registered as provided in 61-3-711 through 61-3-733;

(e) a space in which the person registering the vehicle may indicate the person's desire to donate \$1 or more to promote awareness and education efforts for procurement of organ and tissue donations for anatomical gifts; ~~and~~

(f) a space in which the person registering the vehicle may indicate the person's desire to donate \$1 or more to promote education on, support for, and awareness of traumatic brain injury; and

~~(g)~~ other information that the department may require.

(2) A person who files an application for registration or reregistration of a motor vehicle, except of a mobile home or a manufactured home as those terms are defined in 15-1-101(1), shall upon the filing of the application pay to the county treasurer:

(a) the registration fee, as provided in 61-3-311 and 61-3-321 or 61-3-456;

(b) except as provided in 61-3-456 or unless it has been previously paid, the motor vehicle fees in lieu of tax or registration fees under 61-3-560 through 61-3-562 imposed against the vehicle for the current year of registration and the immediately previous year; ~~and~~

(c) a donation of \$1 or more if the person has indicated on the application that the person wishes to donate to promote awareness and education efforts for procurement of organ and tissue donations in Montana to favorably impact anatomical gifts; and

(d) a donation of \$1 or more if the person has indicated on the application that the person wishes to donate to promote education on, support for, and awareness of traumatic brain injury.

(3) The application may not be accepted by the county treasurer unless the payments required by subsection (2) accompany the application. Except as provided in 61-3-560 through 61-3-562, the department may not assess or impose and the county treasurer may not collect taxes or fees for a period other than:

(a) the current year; and

(b) the immediately previous year if the vehicle was not registered or operated on the highways of the state, regardless of the period of time since the vehicle was previously registered or operated.

(4) The department may make full and complete investigation of the status of the vehicle. An applicant for registration or reregistration shall submit proof from appropriate records of the proper county at the request of the department.

(5) Revenue that accrues from the voluntary donation provided in subsection (2)(c) must be forwarded by the respective county treasurer to the department of revenue for deposit in the state special revenue fund to the credit of an account established by the department of public health and human services to support activities related to awareness and education efforts for procurement of organ and tissue donations for anatomical gifts.

(6) Revenue that accrues from the voluntary donation provided in subsection (2)(d) must be forwarded by the respective county treasurer to the department of revenue for deposit in the state special revenue fund to the credit of the account established in [section 2] to support activities related to education regarding prevention of traumatic brain injury."

**Section 4. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 2, chapter 15, part 22, and the provisions of Title 2, chapter 15, part 22, apply to [sections 1 and 2].

**Section 5. Effective date.** [This act] is effective January 1, 2004.

Approved April 21, 2003

## CHAPTER NO. 450

[HB 733]

AN ACT INCREASING FROM 2 YEARS TO 4 YEARS THE MINIMUM IMPRISONMENT TERM FOR SEXUAL ASSAULT IF THE VICTIM IS LESS THAN 16 YEARS OF AGE AND THE OFFENDER IS 3 OR MORE YEARS OLDER THAN THE VICTIM OR IF THE OFFENDER INFLECTS BODILY INJURY UPON ANYONE IN THE COURSE OF COMMITTING THE SEXUAL ASSAULT; ALLOWING A JUDGE TO IMPOSE A TERM OF LESS THAN 4 YEARS UPON A WRITTEN FINDING THAT THERE IS GOOD CAUSE TO DO SO; AND AMENDING SECTION 45-5-502, MCA.

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

**Section 1.** Section 45-5-502, MCA, is amended to read:

**“45-5-502. Sexual assault.** (1) A person who knowingly subjects another person to any sexual contact without consent commits the offense of sexual assault.

(2) A person convicted of sexual assault shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) If the victim is less than 16 years old 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 sexual assault, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than ~~2~~ 4 years, *unless the judge makes a written finding that there is good cause to impose a term of less than 4 years and imposes a term of less than 4 years*, or more than 100 years and may be fined not more than \$50,000.

(4) An act “in the course of committing sexual assault” includes an attempt to commit the offense or flight after the attempt or commission.

(5) Consent is ineffective under this section if:

(a) the victim is incarcerated in an adult or juvenile correctional, detention, or treatment facility and the perpetrator is an employee, contractor, or volunteer of the facility and has supervisory or disciplinary authority over the victim, unless the act is part of a lawful search; or

(b) the victim is less than 14 years old and the offender is 3 or more years older than the victim.”

Approved April 21, 2003

## CHAPTER NO. 451

[HB 761]

AN ACT PROVIDING AUTHORITY TO EXERCISE EMINENT DOMAIN FOR THE PURPOSE OF ESTABLISHING A VETERANS' CEMETERY; REQUIRING THE DEPARTMENT OF MILITARY AFFAIRS TO ENTER INTO NEGOTIATIONS FOR THE ACQUISITION OF PROPERTY FOR A VETERANS' CEMETERY IF THE LOCATION MEETS FEDERAL REQUIREMENTS FOR FEDERAL FUNDING; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 10-2-601 AND 70-30-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Authority to exercise eminent domain for purposes of establishing veterans' cemetery.** The department of military affairs may take property for public use for a veterans' cemetery or place of burial of the dead. The power of eminent domain must be exercised under the provisions of Title 70, chapter 30.

**Section 2. Department of military affairs required to enter negotiations.** (1) On [the effective date of this act], the department of military affairs shall initiate activities at or in the vicinity of Fort Missoula, Missoula County, Montana, in the city of Missoula, or in Missoula County, as appropriate, to complete all preapplication requirements provided in the federal department

of veterans affairs national cemetery administration's state cemetery grants program grant requirements, including but not limited to:

- (a) completion of an environmental assessment and an environmental impact statement if necessary;
- (b) designation of the area to be served by the preferred location of the cemetery;
- (c) a design concept that describes the primary features to be included in the project and the number of grave sites to be provided; and
- (d) a needs assessment that explains the need for the project to establish, expand, or improve the veterans' cemetery.

(2) If the review provided for in subsection (1) shows that the selected property meets all the federal requirements for a veterans' cemetery, the board shall enter into negotiations with the appropriate entities for the acquisition of property for the purpose of a veterans' cemetery.

**Section 3.** Section 10-2-601, MCA, is amended to read:

**"10-2-601. State veterans' cemeteries.** The department of military affairs shall establish state veterans' cemeteries. A cemetery must be located at Fort William Henry Harrison, Lewis and Clark County, Montana, and at Miles City. *The department may establish a state veterans' cemetery in Missoula County, Montana.*"

**Section 4.** Section 70-30-102, MCA, is amended to read:

**"70-30-102. Public uses enumerated.** Subject to the provisions of this chapter, the right of eminent domain may be exercised for the following public uses:

- (1) all public uses authorized by the government of the United States;
- (2) public buildings and grounds for the use of the state and all other public uses authorized by the legislature of the state;
- (3) public buildings and grounds for the use of any county, city, town, or school district;
- (4) canals, aqueducts, flumes, ditches, or pipes conducting water, heat, or gas for the use of the inhabitants of any county, city, or town;
- (5) projects to raise the banks of streams, remove obstructions from streambanks, and widen, deepen, or straighten stream channels;
- (6) water and water supply systems as provided in Title 7, chapter 13, part 44;
- (7) roads, streets, alleys, controlled-access facilities, and all other public uses for the benefit of a county, city, or town or the inhabitants of a county, city, or town;
- (8) acquisition of road-building material as provided in 7-14-2123;
- (9) stock lanes as provided in 7-14-2621;
- (10) parking areas as provided in 7-14-4501 and 7-14-4622;
- (11) airport and landing field purposes as provided in 7-14-4801, 67-2-301, 67-5-202, 67-6-301, and Title 67, chapters 10 and 11;
- (12) urban renewal projects as provided in Title 7, chapter 15, parts 42 and 43;

- (13) housing authority purposes as provided in Title 7, chapter 15, part 44;
- (14) county recreational and cultural purposes as provided in 7-16-2105;
- (15) city or town athletic fields and civic stadiums as provided in 7-16-4106;
- (16) county cemetery purposes as provided in 7-35-2201, ~~and~~ cemetery association purposes as provided in 35-20-104, *and state veterans' cemetery purposes as provided in [section 1]*;
- (17) preservation of historical or archaeological sites as provided in 23-1-102 and 87-1-209(2);
- (18) public assistance purposes as provided in 53-2-201;
- (19) highway purposes as provided in 60-4-103 and 60-4-104;
- (20) common carrier pipelines as provided in 69-13-104;
- (21) water supply, water transportation, and water treatment systems as provided in 75-6-313;
- (22) mitigation of the release or threatened release of a hazardous or deleterious substance as provided in 75-10-720;
- (23) the acquisition of nonconforming outdoor advertising as provided in 75-15-123;
- (24) screening for or the relocation or removal of junkyards, motor vehicle graveyards, motor vehicle wrecking facilities, garbage dumps, and sanitary landfills as provided in 75-15-223;
- (25) water conservation and flood control projects as provided in 76-5-1108;
- (26) acquisition of natural areas as provided in 76-12-108;
- (27) acquisition of water rights for the natural flow of water as provided in 85-1-204;
- (28) property and water rights necessary for waterworks as provided in 85-1-209 and 85-7-1904;
- (29) conservancy district purposes as provided in 85-9-410;
- (30) wharves, docks, piers, chutes, booms, ferries, bridges, private roads, plank and turnpike roads, and railroads;
- (31) canals, ditches, flumes, aqueducts, and pipes for:
  - (a) supplying mines, mills, and smelters for the reduction of ores;
  - (b) supplying farming neighborhoods with water and drainage;
  - (c) reclaiming lands; and
  - (d) floating logs and lumber on streams that are not navigable;
- (32) sites for reservoirs necessary for collecting and storing water. However, reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.
- (33) roads, tunnels, and dumping places for working mines, mills, or smelters for the reduction of ores;
- (34) outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines, mills, and smelters for the reduction of ores;
- (35) an occupancy in common by the owners or the possessors of different mines of any place for the flow, deposit, or conduct of tailings or refuse matter from their several mines, mills, or smelters for reduction of ores and sites for

reservoirs necessary for collecting and storing water for the mines, mills, or smelters. However, the reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.

(36) private roads leading from highways to residences or farms;

(37) telephone or electrical energy lines;

(38) telegraph lines;

(39) sewerage of any:

(a) county, city, or town or any subdivision of a county, city, or town, whether incorporated or unincorporated;

(b) settlement consisting of not less than 10 families; or

(c) public buildings belonging to the state or to any college or university;

(40) tramway lines;

(41) logging railways;

(42) temporary logging roads and banking grounds for the transportation of logs and timber products to public streams, lakes, mills, railroads, or highways for a time that the court or judge may determine. However, the grounds of state institutions may not be used for this purpose.

(43) underground reservoirs suitable for storage of natural gas;

(44) projects to mine and extract ores, metals, or minerals owned by the condemnor located beneath or upon the surface of property where the title to the surface vests in others. However, the use of the surface of property for strip mining or open-pit mining of coal (i.e., any mining method or process in which the strata or overburden is removed or displaced in order to extract the coal) is not a public use, and eminent domain may not be exercised for this purpose.

(45) projects to restore and reclaim lands that were strip mined or underground mined for coal and not reclaimed in accordance with Title 82, chapter 4, part 2, and to abate or control adverse effects of strip or underground mining on those lands."

**Section 5. Appropriation.** There is appropriated \$150,000 from the special revenue account provided for in 10-2-603 to the department of military affairs for the purpose of completing the preapplication inspection and requirements as provided in [section 2(1)].

**Section 6. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 10, chapter 2, part 6, and the provisions of Title 10, chapter 2, part 6, apply to [section 1].

**Section 7. Coordination instruction.** If Senate Bill No. 401 is passed and approved, then all references in [this act] to the department of military affairs must be changed to the board of veterans' affairs.

**Section 8. Effective date.** [This act] is effective on passage and approval.

Approved April 21, 2003

## CHAPTER NO. 452

[SB 35]

AN ACT PROVIDING THAT IF A PERSON WITH A DEVELOPMENTAL DISABILITY IS FOUND FIT TO PROCEED AND IS CONVICTED OF A

CRIME, THE COURT MAY SENTENCE THE PERSON TO AN APPROPRIATE DEVELOPMENTAL DISABILITIES FACILITY; ALLOWING EVIDENCE OF DEVELOPMENTAL DISABILITY TO PROVE STATE OF MIND; PROVIDING THAT DEVELOPMENTAL DISABILITY MAY EXCLUDE FITNESS TO PROCEED; AND AMENDING SECTIONS 46-14-102, 46-14-103, 46-14-206, 46-14-221, 46-14-311, AND 46-14-312, MCA.

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

**Section 1.** Section 46-14-102, MCA, is amended to read:

**“46-14-102. Evidence of mental disease or defect or developmental disability admissible to prove state of mind.** Evidence that the defendant suffered from a mental disease or defect *or developmental disability* is admissible to prove that the defendant did or did not have a state of mind that is an element of the offense.”

**Section 2.** Section 46-14-103, MCA, is amended to read:

**“46-14-103. Mental disease or defect or developmental disability excluding fitness to proceed.** A person who, as a result of mental disease or defect *or developmental disability*, is unable to understand the proceedings against the person or to assist in the person’s own defense may not be tried, convicted, or sentenced for the commission of an offense so long as the incapacity endures.”

**Section 3.** Section 46-14-206, MCA, is amended to read:

**“46-14-206. Report of examination.** (1) A report of the examination must include the following:

- (a) a description of the nature of the examination;
- (b) a diagnosis of the mental condition of the defendant, including an opinion as to whether the defendant suffers from a mental disorder, *as defined in 53-21-102*, and may require commitment or is seriously developmentally disabled, as defined in 53-20-102;
- (c) if the defendant suffers from a mental disease or defect *or developmental disability*, an opinion as to the defendant’s capacity to understand the proceedings against the defendant and to assist in the defendant’s own defense;
- (d) when directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind that is an element of the offense charged; and
- (e) when directed by the court, an opinion as to the capacity of the defendant, because of a mental disease or defect *or developmental disability*, to appreciate the criminality of the defendant’s behavior or to conform the defendant’s behavior to the requirement of the law.

(2) If the examination cannot be conducted by reason of the unwillingness of the defendant to participate in the examination, the report must state that fact and must include, if possible, an opinion as to whether the unwillingness of the defendant was the result of *the* mental disease or defect *or developmental disability*.”

**Section 4.** Section 46-14-221, MCA, is amended to read:

**“46-14-221. Determination of fitness to proceed — effect of finding of unfitness — expenses.** (1) The issue of the defendant’s fitness to proceed may be raised by the court, by the defendant or the defendant’s counsel, or by the prosecutor. When the issue is raised, it must be determined by the court. If



neither the prosecutor nor the defendant's counsel contests the finding of the report filed under 46-14-206, the court may make the determination on the basis of the report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon the hearing, the parties have the right to subpoena and cross-examine the psychiatrists or licensed clinical psychologists who joined in the report and to offer evidence upon the issue.

(2) (a) If the court determines that the defendant lacks fitness to proceed, the proceeding against the defendant must be suspended, except as provided in subsection (4), and the court shall commit the defendant to the custody of the director of the department of public health and human services to be placed in an appropriate ~~institution~~ *mental health facility, as defined in 53-21-102, or residential facility, as defined in 53-20-102*, of the department of public health and human services for so long as the unfitness endures *or until disposition of the defendant is made pursuant to this section, whichever occurs first*.

(b) ~~The institution~~ *facility* shall develop an individualized treatment plan to assist the defendant to gain fitness to proceed. The treatment plan may include a physician's prescription of reasonable and appropriate medication that is consistent with accepted medical standards. If the defendant refuses to comply with the treatment plan, the institution may petition the court for an order requiring compliance. The defendant has a right to a hearing on the petition. The court shall enter into the record a detailed statement of the facts upon which an order is made, and if compliance with the individualized treatment plan is ordered, the court shall also enter into the record specific findings that the state has proved an overriding justification for the order and that the treatment being ordered is medically appropriate.

~~(3)~~ (3) (a) The committing court shall, within 90 days of commitment, review the defendant's fitness to proceed. If the court finds that the defendant is still unfit to proceed and that it does not appear that the defendant will become fit to proceed within the reasonably foreseeable future, the proceeding against the defendant must be dismissed, except as provided in subsection (4), ~~and the~~.

(b) *If the court determines that the defendant lacks fitness to proceed because the defendant has a mental disorder, the proceeding against the defendant must be dismissed and the prosecutor shall petition the court in the manner provided in Title 53, chapter 20 or 21, whichever is appropriate, to determine the disposition of the defendant pursuant to those provisions.*

~~(3)~~ (c) If the court determines that the defendant lacks fitness to proceed because the defendant has a developmental disability as ~~provided~~ *defined* in 53-20-102~~(5)~~, the proceeding against the defendant must be dismissed and the prosecutor shall petition the court in the manner provided in Title 53, chapter 20, *to determine the disposition of the defendant pursuant to those provisions.*

(4) The fact that the defendant is unfit to proceed does not preclude any legal objection to the prosecution that is susceptible to fair determination prior to trial and that is made without the personal participation of the defendant.

(5) The expenses of sending the defendant to the custody of the director of the department of public health and human services to be placed in an appropriate institution of the department of ~~corrections~~ *public health and human services*, of keeping the defendant there, and of bringing the defendant back are payable by the state as a district court expense."

**Section 5.** Section 46-14-311, MCA, is amended to read:

**“46-14-311. Consideration of mental disease or defect or developmental disability in sentencing.** Whenever a defendant is convicted on a verdict of guilty or a plea of guilty or nolo contendere and claims that at the time of the commission of the offense of which convicted the defendant was suffering from a mental disease or defect *or developmental disability* that rendered the defendant unable to appreciate the criminality of the defendant's behavior or to conform the defendant's behavior to the requirements of law, the sentencing court shall consider any relevant evidence presented at the trial and shall require additional evidence ~~as~~ *that* it considers necessary for the determination of the issue, including examination of the defendant and a report of the examination as provided in 46-14-202 and 46-14-206.”

**Section 6.** Section 46-14-312, MCA, is amended to read:

**“46-14-312. Sentence to be imposed.** (1) If the court finds that the defendant at the time of the commission of the offense of which the defendant was convicted did not suffer from a mental disease or defect as described in 46-14-311, the court shall sentence the defendant as provided in Title 46, chapter 18.

(2) If the court finds that the defendant at the time of the commission of the offense suffered from a mental disease or defect *or developmental disability* as described in 46-14-311, any mandatory minimum sentence prescribed by law for the offense need not apply ~~and the~~. ~~The~~ court shall sentence the defendant to be committed to the custody of the director of the department of public health and human services to be placed, after consideration of the recommendations of the professionals providing treatment to the defendant ~~and recommendations of the professionals who have evaluated the defendant~~, in an appropriate ~~correctional or~~ ~~correctional facility~~, mental health facility, as defined in 53-21-102, residential facility, as defined in 53-20-102, or developmental disabilities facility, as defined in 53-20-202, for custody, care, and treatment for a definite period of time not to exceed the maximum term of imprisonment that could be imposed under subsection (1). The director may, after considering the recommendations of the professionals providing treatment to the defendant ~~and recommendations of the professionals who have evaluated the defendant~~, subsequently transfer the defendant to another ~~correctional or mental health~~ ~~correctional, mental health, residential, or developmental disabilities~~ facility that will better serve the defendant's custody, care, and treatment needs. The authority of the court with regard to sentencing is the same as authorized in Title 46, chapter 18, if the treatment of the individual and the protection of the public are provided for.

(3) Either the director or a defendant whose sentence has been imposed under subsection (2) may petition the sentencing court for review of the sentence if the professional person certifies that:

- (a) the defendant no longer suffers from a mental disease or defect;
- (b) the defendant's mental disease or defect no longer renders the defendant unable to appreciate the criminality of the defendant's conduct or to conform the defendant's conduct to the requirements of law;
- (c) the defendant suffers from a mental disease or defect *or developmental disability* but is not a danger to the defendant or others; or
- (d) the defendant suffers from a mental disease or defect that makes the defendant a danger to the defendant or others, but:
  - (i) there is no treatment available for the mental disease or defect;

- (ii) the defendant refuses to cooperate with treatment; or
  - (iii) the defendant will no longer benefit from active inpatient treatment for the mental disease or defect.
- (4) The sentencing court may make any order not inconsistent with its original sentencing authority, except that the length of confinement or supervision must be equal to that of the original sentence. The professional person shall review the defendant's status each year."

Approved April 21, 2003

## CHAPTER NO. 453

[SB 111]

AN ACT AMENDING THE DEFINITION OF "ELIGIBLE PERSON" AS IT RELATES TO THE COMPREHENSIVE HEALTH ASSOCIATION AND PLAN; AUTHORIZING THE INSURANCE COMMISSIONER TO LIMIT CERTAIN ELIGIBILITY CRITERIA BY ADOPTING RULES ON WHICH TO BASE THE ELIGIBILITY ON INCOME LEVEL; DEFINING ELIGIBILITY IN TERMS OF FEDERAL TRADE ADJUSTMENT ASSISTANCE; AMENDING SECTIONS 33-22-1501, 33-22-1502, 33-22-1513, 33-22-1516, AND 33-22-1524, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 33-22-1501, MCA, is amended to read:

**"33-22-1501. Definitions.** As used in this part, the following definitions apply:

- (1) "Association" means the comprehensive health association created by 33-22-1503.
- (2) "Association plan" means a policy of insurance coverage that is offered by the association and that is certified by the association as required by 33-22-1521.
- (3) "Association plan premium" means the charge determined pursuant to 33-22-1512 for membership in the association plan based on the benefits provided in 33-22-1521.
- (4) "Association portability plan" means a policy of insurance coverage that is offered by the association to a federally defined eligible individual.
- (5) "Association portability plan premium" means the charge determined by the association and approved by the commissioner for an association portability plan.
- (6) "Block of business" means a separate risk pool grouping of covered individuals, enrollees, and dependents as defined by rules of the commissioner.
- (7) (a) "Eligible person" means an individual who:
  - ~~(i)~~ (i) is a resident of this state and applies for coverage under the association plan;
  - (ii) is not eligible for any other form of health insurance coverage or health service benefits, except:
    - (A) for coverage consisting solely of excepted benefits, as defined in 33-22-140; or

*(B) subject to eligibility limitations adopted pursuant to 33-22-1502(1)(b), if the individual has coverage comparable to the association plan but is paying a premium or has received a renewal notice to pay a premium that is more than 150% of the average premium rate used to calculate the association plan premium rate pursuant to 33-22-1512(1); and*

*(iii) meets one or more of the following criteria:*

~~(b) unless the individual's eligibility is waived by the association,~~ (A) has, within 6 months prior to the date of application, been rejected for disability insurance or health service benefits by at least two insurers, societies, or health service corporations, *unless the association waives this requirement*; or

(B) has had a restrictive rider or preexisting conditions limitation, which limitation is required by at least two insurers, societies, or health service corporations, that has the effect of substantially reducing coverage from that received by a person considered a standard risk; ~~and~~

~~(c) is not eligible for any other form of disability insurance or health service benefits.~~

*(b) The term does not apply to an individual who is certified as eligible for federal trade adjustment assistance or for pension benefit guarantee corporation assistance, as provided by the federal Trade Adjustment Assistance Reform Act of 2002, and is eligible for the association portability plan.*

(8) "Federally defined eligible individual" means a person who is an individual enrolling in the association portability plan:

(a) for whom, as of the date on which the individual seeks coverage under the association portability plan, the aggregate of the periods of creditable coverage is 18 months or more and whose most recent prior creditable coverage was under a group health plan, governmental plan, or church plan;

(b) who does not have other health insurance coverage;

(c) who is not eligible for coverage under:

(i) a group health plan;

(ii) Title XVIII, part A or B, of the Social Security Act, 42 U.S.C. 1395c through 1395i-4 or 42 U.S.C. 1395j through 1395w-4; or

(iii) a state plan under Title XIX of the Social Security Act, 42 U.S.C. 1396a through 1396u, or a successor program;

(d) for whom the most recent coverage was not terminated for factors relating to nonpayment of premiums or fraud;

(e) who, if offered the option of continuation coverage under a COBRA continuation provision or under a similar state program, elected that coverage; and

(f) who has exhausted continuation coverage under the COBRA continuation provision or program described in subsection (8)(e) if the individual elected the continuation coverage described in subsection (8)(e).

(9) "Health service corporation" means a corporation operating pursuant to Title 33, chapter 30, and offering or selling contracts of disability insurance.

(10) "Insurance arrangement" means any plan, program, contract, or other arrangement to the extent not exempt from inclusion by virtue of the provisions of the federal Employee Retirement Income Security Act of 1974 under which one or more employers, unions, or other organizations provide to their

employees or members, either directly or indirectly through a trust of a third-party administrator, health care services or benefits other than through an insurer.

(11) "Insurer" means a company operating pursuant to Title 33, chapter 2 or 3, and offering or selling policies or contracts of disability insurance, as provided in Title 33, chapter 22.

(12) "Lead carrier" means the licensed administrator or insurer selected by the association to administer the association plan.

(13) "Medicare" means coverage under both parts A and B of Title XVIII of the Social Security Act, 42 U.S.C. 1395, et seq., as amended.

(14) "Preexisting condition" means any condition for which an applicant for coverage under the association plan has received medical attention during the 3 years immediately preceding the filing of an application.

(15) "*Qualified TAA-eligible individual*" means an individual and any dependent of that individual, in addition to meeting the requirements specified in subsection (17):

(a) *who has 3 months of prior creditable coverage;*

(b) *whose application for association portability plan coverage is made within 63 days following termination of the applicant's most recent prior creditable coverage; and*

(c) *who, if eligible for COBRA, is not required to elect or exhaust continuation coverage under the COBRA continuation provision or under a similar state program.*

~~(15)~~ (16) "Society" means a fraternal benefit society operating pursuant to Title 33, chapter 7, and offering or selling certificates of disability insurance.

(17) "*TAA-eligible individual*" means an individual and any dependent of that individual enrolling in the association portability plan:

(a) *who is a resident of this state on the date of application to the pool;*

(b) *who has been certified as eligible for federal trade adjustment assistance and a health insurance tax credit or for pension benefit guarantee corporation assistance, as provided by the federal Trade Adjustment Assistance Reform Act of 2002;*

(c) *who does not have other health insurance coverage; and*

(d) *who is not covered under a group health plan maintained by an employer, including a group health plan available through a spouse, if the employer contributes 50% or more to the total cost of coverage."*

**Section 2.** Section 33-22-1502, MCA, is amended to read:

**"33-22-1502. Duties of commissioner — rules.** The commissioner shall:

(1) adopt rules to carry out the provisions and purposes of this part, including rules:

(a) regarding late payment penalties or rates of interest charged on unpaid assessments; and

(b) that limit association plan eligibility under 33-22-1501(7)(a)(ii)(B) according to income level;

(2) supervise the creation of the association within the limits described in 33-22-1503;

(3) approve the selection of the lead carrier by the association and approve the association's contract with the lead carrier, including the association plan coverage and premiums to be charged;

(4) conduct periodic audits to ensure the general accuracy of the financial data submitted by the lead carrier and the association; and

(5) undertake, directly or through contracts with other persons, studies or demonstration projects to develop awareness of the benefits of this part so that the residents of this state may best avail themselves of the health care benefits provided by this part."

**Section 3.** Section 33-22-1513, MCA, is amended to read:

**"33-22-1513. Operation of association plan and association portability plans.** (1) Upon acceptance by the lead carrier under 33-22-1516, an eligible person may enroll in the association plan by payment of the association plan premium to the lead carrier.

(2) Upon application by a federally defined eligible individual *or a TAA-eligible individual* to the lead carrier for an association portability plan, the association may not:

(a) decline to offer an association portability plan; or

(b) *except as provided in subsection (3)*, impose a preexisting condition exclusion with respect to an individual's association portability plan coverage if application for association portability plan coverage is made within 63 days following termination of the applicant's most recent prior creditable coverage.

*(3) The association may impose a preexisting condition exclusion as provided in 33-22-1516 with respect to a TAA-eligible individual's association portability plan coverage if that individual does not meet the requirements defining a qualified TAA-eligible individual.*

~~(4)~~(4) Not less than 88% of the association plan premiums paid to the lead carrier may be used to pay claims and not more than 12% may be used for payment of the lead carrier's direct and indirect expenses as specified in 33-22-1514.

~~(4)~~(5) Any income in excess of the costs incurred by the association in providing reinsurance or administrative services must be held at interest and used by the association to offset past and future losses because of claims expenses of the association plan and the association portability plan or be allocated to reduce association plan premiums.

~~(5)~~(6) (a) Each participating member of the association shall share the losses because of claims expenses of the association plan and the association portability plan for plans issued or approved for issuance by the association and shall share in the operating and administrative expenses incurred or estimated to be incurred by the association incident to the conduct of its affairs in the following manner:

(i) Each participating member of the association must be assessed by the association on an annual basis an amount not to exceed 1% of the association member's total disability insurance premium received from or on behalf of Montana residents as determined by the commissioner. Assessments made under this subsection ~~(5)(a)~~ (6)(a) or funds from any other source must be allocated to the association plan and the association portability plan in proportion to the needs of the two plans. If the needs of the association plan and the association portability plan exceed the funds generated by the 1%

assessment, the association is then authorized to spend any funds appropriated by the legislature for the support of the plans. Any appropriation to the association may be expended for the operation of the association plan or the association portability plan.

(ii) (A) Payment of an assessment is due within 30 days of receipt by a member of a written notice of the annual assessment. After 30 days, the association shall charge a member:

(I) a late payment penalty of 1.5% a month or fraction of a month on the unpaid assessment, not to exceed 18% of the assessment due;

(II) interest at the rate of 12% a year on the unpaid assessment, to be accrued at 1% a month or fraction of a month; or

(III) both of the charges in subsections ~~(5)(a)(ii)(A)(I)~~ (6)(a)(ii)(A)(I) and ~~(5)(a)(ii)(A)(II)~~ (6)(a)(ii)(A)(II).

(B) Failure by a contributing member to tender the association assessment within the 30-day period is grounds for termination of membership. A member terminated for failure to tender the association assessment is ineligible to write health care benefit policies or contracts in this state under 33-22-1503(2).

(iii) An associate member that ceases to do disability insurance business within the state remains liable for assessments through the calendar year in which the member ceased doing disability insurance business. The association may decline to levy an assessment against an association member if the assessment, as determined pursuant to this section, would not exceed \$50.

(b) For purposes of this subsection ~~(5)~~ (6), "total disability insurance premium" does not include premiums received from disability income insurance, credit disability insurance, disability waiver insurance, life insurance, medicare risk or other similar medicare health maintenance organization payments, or medicaid health maintenance organization payments.

(c) Any income in excess of the incurred or estimated claims expenses of the association plan and the association portability plan and the operating and administrative expenses of the association must be held at interest and used by the association to offset past and future losses because of claims expenses of the association plan and the association portability plan or be allocated to reduce association plan premiums.

~~(6)~~(7) The proportion of the annual assessment allocated to the operation and expenses of the association plan, not to include any amount of late payment penalty or interest charged, may be offset by an association member against the premium tax payable by that association member pursuant to 33-2-705 for the year in which the annual assessment is levied. The commissioner shall report to the office of budget and program planning, as a part of the information required by 17-7-111, the total amount of premium tax offset claimed by association members during the preceding biennium. The proportion of the annual assessment allocated to the operation and expenses of the association portability plan and levied against an association member may not be offset against the premium tax payable by that association member."

**Section 4.** Section 33-22-1516, MCA, is amended to read:

**"33-22-1516. Enrollment by eligible person.** (1) The association plan must be open for enrollment by eligible persons. An eligible person may enroll in

the plan by submission of a certificate of eligibility to the lead carrier. The certificate must provide:

(a) the name, address, and age of the applicant and length of the applicant's residence in this state;

(b) the name, address, and age of spouse and children, if any, if they are to be insured;

(c) written evidence that the person fulfills all of the elements of an eligible person, as defined in 33-22-1501; and

(d) a designation of coverage desired.

(2) Within 30 days of receipt of the certificate, the lead carrier shall either reject the application for failing to comply with the requirements of subsection (1) or forward the eligible person a notice of acceptance and billing information. Insurance is effective on the first of the month following acceptance.

(3) An eligible person may not purchase more than one policy from the association plan.

(4) A person who obtains coverage under the association plan may not be covered for any preexisting condition during the first 12 months of coverage under the association plan if the person was diagnosed or treated for that condition during the 3 years immediately preceding the filing of an application. The association may not apply a preexisting condition exclusion to coverage under the association portability plan if application for association portability plan coverage is made by a *federally defined eligible individual or a qualified TAA-eligible individual* within 63 days following termination of the applicant's most recent prior creditable coverage. The association shall waive any time period applicable to a preexisting condition exclusion for the period of time that any other eligible individual, *including an individual who is eligible pursuant to 33-22-1501(7)(a)(ii)(B)*, was covered under the following types of coverage if the coverage was continuous to a date not more than 30 days prior to submission of an application for coverage under the association plan:

(a) an individual health insurance policy that includes coverage by an insurance company, a fraternal benefit society, a health service corporation, or a health maintenance organization that provides benefits similar to or exceeding the benefits provided by the association plan; or

(b) an employer-based health insurance benefit arrangement that provides benefits similar to or exceeding the benefits provided by the association plan."

**Section 5.** Section 33-22-1524, MCA, is amended to read:

**"33-22-1524. Association authority for borrowing.** (1) If the amount of the annual assessment collected under 33-22-1513~~(5)~~(6) and other available funds is insufficient to meet incurred or estimated claims expenses of the association plan and the association portability plan and the operating and administrative expenses of the association, the association may borrow from the board of investments for a period not to exceed 2 years any funds necessary for the continued operation of the association plan and the association portability plan. The loaned funds may be used only to pay incurred or estimated claims expenses of the association plan and the association portability plan and the operating and administrative expenses of the association.

(2) Whenever the association accepts a loan from the board of investments pursuant to this section, it shall repay the loan and any interest required under the terms of the loan through assessments and premium income. In accordance



with the constitutions of the United States and the state of Montana, the state pledges that it may not in any way impair the obligations of any loan agreement between the association and the board of investments by repealing the assessment imposed by 33-22-1513~~(5)~~(6) or by reducing it below the amount necessary to make annual loan payments.”

**Section 6. Effective date.** [This act] is effective on passage and approval.

Approved April 22, 2003

## CHAPTER NO. 454

[SB 209]

AN ACT REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO PUBLISH AN ANNUAL COUNT OF GAME ANIMALS, INCLUDING THE BASIS UPON WHICH THE GAME COUNT WAS MADE; AMENDING SECTION 87-1-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*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. (Temporary) Powers and duties.** (1) 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. It 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) The department shall enforce all the laws of the state respecting the protection, preservation, 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, 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 appropriated to and under control of 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, 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) The department is authorized to make, promulgate, and enforce reasonable rules and regulations not inconsistent with the provisions of 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.; and

(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.

(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) 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.* (Terminates March 1, 2006—sec. 6, Ch. 544, L. 1999.)

**87-1-201. (Effective March 1, 2006) Powers and duties.** (1) The department shall supervise all the wildlife, fish, game, game and nongame birds, waterfowl, and the game and fur-bearing animals of the state. It 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) The department shall enforce all the laws of the state respecting the protection, preservation, 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, 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 appropriated to and under control of 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, 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) The department is authorized to make, promulgate, and enforce reasonable rules and regulations not inconsistent with the provisions of 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.; and

(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.

(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) 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."*

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

Approved April 21, 2003

## CHAPTER NO. 455

[SB 243]

AN ACT REVISING THE NAME OF THE AFFORDABLE HOUSING REVOLVING LOAN FUND AND MOVING IT FROM THE STATE SPECIAL REVENUE FUND TO THE HOUSING AUTHORITY ENTERPRISE FUND; AMENDING SECTIONS 90-6-131, 90-6-133, AND 90-6-134, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 90-6-131, MCA, is amended to read:

**“90-6-131. Legislative declaration.** (1) The legislature finds that current economic conditions, federal housing policies, and declining resources at the federal, state, and local levels adversely affect the ability of low-income and moderate-income persons to obtain safe, decent, and affordable housing.

(2) The legislature further finds that the state will lose substantial sums allocated to it by the federal government for affordable housing for low-income and moderate-income households unless matching funds are provided.

(3) The legislature declares that it is in the public interest to establish a continuously renewable financial resource known as an affordable housing revolving loan ~~fund~~ account to assist low- and moderate-income citizens in meeting their basic housing needs.”

**Section 2.** Section 90-6-133, MCA, is amended to read:

**“90-6-133. Revolving loan account — administration.** (1) There is an affordable housing revolving loan account in the ~~state special revenue fund in the state treasury~~ housing authority enterprise fund provided for in 90-6-107. The money in the loan account is allocated to the board for the purpose of providing loans to eligible applicants.

(2) (a) Except as provided in subsection (2)(b), funds deposited in the loan account must be used for the program authorized in 90-6-134 and may not be used to pay the expenses of any other program or service administered by the board.

(b) Money transferred to the account pursuant to section 2, Chapter 502, Laws of 2001, may be used only for the purposes authorized by the temporary assistance for needy families block grant pursuant to Title IV of the Social Security Act, 42 U.S.C. 601, et seq.

(3) The board may determine the rate of interest to be charged for any loan made under the provisions of 90-6-131 through 90-6-136.

(4) The board may accept contributions, gifts, and grants for deposit into the loan account. The money must be used in accordance with the provisions of 90-6-134.

(5) The costs incurred by the board in administering the loan ~~fund~~ account must be paid from the loan account.

(6) Interest and principal on loans from the ~~fund~~ loan account must be repaid to the loan ~~fund~~ account.

(7) Interest income generated by investment of the principal of the loan ~~fund~~ account is retained in the loan ~~fund~~ account.”

**Section 3.** Section 90-6-134, MCA, is amended to read:

**“90-6-134. Housing loan program — loan capital restricted to interest on principal — eligible applicants.** (1) The money in the loan ~~fund~~ account must be used to provide financial assistance in the form of direct loans by the board to eligible applicants.

(2) After the initial principal is loaned to eligible applicants, the amount of loans made in a fiscal year is contingent on the repayment of loan principal and on the amount of interest income generated by the principal of the loan ~~fund~~ account.

(3) Money from the loan ~~fund~~ account must be used to provide:

(a) matching funds for public or private money available from other sources for the development of low-income and moderate-income housing;

(b) bridge financing necessary to make a low-income housing development or a moderate-income housing development financially feasible;

(c) acquisition of existing housing for the purpose of preservation of or conversion to low-income or moderate-income housing; or

(d) preconstruction technical assistance to eligible recipients in rural areas and small cities and towns.

(4) (a) Technical assistance under subsection (3)(d) may include but is not limited to:

(i) financial planning and packaging for housing developments and projects;

(ii) project design, architectural planning, and siting;

(iii) compliance with planning and permitting requirements; or

(iv) maximizing local government contributions to project development in the form of land donations, infrastructure improvements, zoning variances, or creative local planning.

(b) The board may contract with a nonprofit organization to provide this technical assistance.

(5) Money from the loan fund account may not be used to replace existing or available sources of funding for eligible activities.

(6) Organizations eligible for loans from the loan fund account are local governments, tribal governments, local housing authorities, nonprofit community- or neighborhood-based organizations, regional or statewide nonprofit housing assistance organizations, or for-profit housing developers.”

**Section 4. Effective date.** [This act] is effective July 1, 2003.

Approved April 22, 2003

## CHAPTER NO. 456

[SB 263]

AN ACT CREATING A CHILD HEARSAY EXCEPTION IN CRIMINAL PROCEEDINGS; ALLOWING THE USE OF CHILD HEARSAY TESTIMONY REGARDING OUT-OF-COURT STATEMENTS MADE BY A CHILD VICTIM IN CRIMINAL PROCEEDINGS INVOLVING SEXUAL OFFENSES AND OTHER CRIMES OF VIOLENCE; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

WHEREAS, the state has an interest in protecting the welfare of children generally; and

WHEREAS, the state has an interest in protecting the well-being of children who are victims of sexual offenses and other violent crimes; and

WHEREAS, the state has an interest in giving child witnesses a voice in criminal proceedings; and

WHEREAS, it is the Legislature's prerogative to enact laws for the protection of children; and

WHEREAS, the Legislature finds that the admission of child hearsay testimony under a residual exception to the general hearsay rules does not always serve the general purposes of the rules and the interests of justice; and

WHEREAS, Rule 802 of the Montana Rules of Evidence provides that the Legislature may by statute provide for exceptions to the general rule that hearsay is not admissible; and

WHEREAS, the Legislature acknowledges the necessity that child hearsay testimony must be examined closely for reliability.

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

**Section 1. Child hearsay exception — criminal proceedings.** (1) Otherwise inadmissible hearsay may be admissible in evidence in a criminal proceeding, as provided in subsection (2), if:

- (a) the declarant of the out-of-court statement is a child who is:
  - (i) an alleged victim of a sexual offense or other crime of violence, including partner or family member assault, that is the subject of the criminal proceeding; or
  - (ii) a witness to an alleged sexual offense or other crime of violence, including partner or family member assault, that is the subject of the criminal proceeding;
- (b) the court finds that the time, content, and circumstances of the statement provide circumstantial guarantees of trustworthiness;
- (c) the child is unavailable as a witness;
- (d) the child hearsay testimony is offered as evidence of a material fact and is more probative on the point for which it is offered than any other evidence available through reasonable efforts; and
- (e) the party intending to offer the child hearsay testimony gives sufficient notice to provide the adverse party with a fair opportunity to prepare. The notice must include the content of the statement, the approximate time, date, and location of the statement, the person to whom the statement was made, and the circumstances surrounding the statement that the offering party believes support the statement's reliability.

(2) The court shall issue findings of fact and conclusions of law setting forth the court's reasoning on the admissibility of the child's testimony.

(3) When deciding the admissibility of offered child hearsay testimony under subsections (1) and (2), a court shall consider the following:

- (a) the attributes of the child hearsay declarant, including:
  - (i) the child's age;
  - (ii) the child's ability to communicate verbally;
  - (iii) the child's ability to comprehend the statements or questions of others;
  - (iv) the child's ability to tell the difference between truth and falsehood;
  - (v) the child's motivation to tell the truth, including whether the child understands the general obligation to speak truthfully and not fabricate stories;
  - (vi) whether the child possessed sufficient mental capacity at the time of the alleged incident to create an accurate memory of the incident; and
  - (vii) whether the child possesses sufficient memory to retain an independent recollection of the events at issue;

(b) information regarding the witness who is relating the child's hearsay statement, including:

(i) the witness's relationship to the child;

(ii) whether the relationship between the witness and the child has an impact on the trustworthiness of the child's hearsay statement;

(iii) whether the witness has a motive to fabricate or distort the child's statement; and

(iv) the circumstances under which the witness heard the child's statement, including the timing of the statement in relation to the incident at issue and the availability of another person in whom the child could confide;

(c) information regarding the child's statement, including:

(i) whether the statement contains knowledge not normally attributed to a child of the declarant's age;

(ii) whether the statement was spontaneous;

(iii) the suggestiveness of statements by other persons to the child at the time that the child made the statement;

(iv) if statements were made by the child to more than one person, whether those statements were consistent; and

(v) the nearness in time of the statement to the incident at issue;

(d) the availability of corroborative evidence through physical evidence or circumstantial evidence of motive or opportunity, including:

(i) whether the alleged act can be corroborated; and

(ii) if the child's statement identifies a perpetrator, whether that identity can be corroborated; and

(e) other considerations that in the judge's opinion may bear on the admissibility of the child hearsay testimony.

(4) As used in this section, "child" means a person under 15 years of age.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 46, chapter 16, part 2, and the provisions of Title 46, chapter 16, part 2, apply to [section 1].

**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. 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 5. Effective date.** [This act] is effective July 1, 2003.

**Section 6. Applicability.** [This act] applies to criminal proceedings begun after June 30, 2003.

Approved April 22, 2003

**CHAPTER NO. 457**

[SB 363]

AN ACT LIMITING AWARDS OF PUNITIVE DAMAGES IN CIVIL CASES OTHER THAN CLASS ACTION LAWSUITS; AND AMENDING SECTION 27-1-220, MCA.

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

**Section 1.** Section 27-1-220, MCA, is amended to read:

**“27-1-220. Punitive damages — when allowed — limitation.** (1) Except as otherwise expressly provided by statute *and subject to subsection (3)*, a judge or jury may award, in addition to compensatory damages, punitive damages for the sake of example and for the purpose of punishing a defendant.

(2) (a) Unless otherwise expressly provided by statute, punitive damages may not be recovered in any action arising from:

- (i) contract; or
- (ii) breach of contract.

(b) Subsection (2)(a) does not prohibit recovery of punitive damages in a products liability action or an action arising under 33-18-201.

(3) *An award for punitive damages may not exceed \$10 million or 3% of a defendant’s net worth, whichever is less. This subsection does not limit punitive damages that may be awarded in class action lawsuits.”*

Approved April 21, 2003

**CHAPTER NO. 458**

[SB 364]

AN ACT PROVIDING THAT EXPOSING A CHILD TO THE CRIMINAL DISTRIBUTION, PRODUCTION, OR MANUFACTURE OF DANGEROUS DRUGS OR TO THE OPERATION OF AN UNLAWFUL CLANDESTINE LABORATORY CONSTITUTES CHILD ABUSE OR NEGLECT FOR PURPOSES OF THE CHILD ABUSE AND NEGLECT STATUTES; AMENDING SECTION 41-3-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 41-3-102, MCA, is amended to read:

**“41-3-102. Definitions.** As used in this chapter, the following definitions apply:

(1) “Abandon”, “abandoned”, and “abandonment” mean:

(a) leaving a child under circumstances that make reasonable the belief that the parent does not intend to resume care of the child in the future;

(b) willfully surrendering physical custody for a period of 6 months and during that period not manifesting to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child;



(c) that the parent is unknown and has been unknown for a period of 90 days and that reasonable efforts to identify and locate the parent have failed; or

(d) the voluntary surrender, as defined in 40-6-402, by a parent of a newborn who is no more than 30 days old to an emergency services provider, as defined in 40-6-402.

(2) "A person responsible for a child's welfare" means:

(a) the child's parent, guardian, foster parent or an adult who resides in the same home in which the child resides;

(b) a person providing care in a day-care facility;

(c) an employee of a public or private residential institution, facility, home, or agency; or

(d) any other person responsible for the child's welfare in a residential setting.

(3) "Abused or neglected" means the state or condition of a child who has suffered child abuse or neglect.

(4) (a) "Adequate health care" means any medical care or nonmedical remedial health care recognized by an insurer licensed to provide disability insurance under Title 33, including the prevention of the withholding of medically indicated treatment or medically indicated psychological care permitted or authorized under state law.

(b) This chapter may not be construed to require or justify a finding of child abuse or neglect for the sole reason that a parent or legal guardian, due to religious beliefs, does not provide adequate health care for a child. However, this chapter may not be construed to limit the administrative or judicial authority of the state to ensure that medical care is provided to the child when there is imminent substantial risk of serious harm to the child.

(5) "Best interests of the child" means the physical, mental, and psychological conditions and needs of the child and any other factor considered by the court to be relevant to the child.

(6) "Child" or "youth" means any person under 18 years of age.

(7) (a) "Child abuse or neglect" means:

(i) actual harm to a child's health or welfare;

(ii) substantial risk of harm to a child's health or welfare; or

(iii) abandonment.

(b) (i) The term includes:

(A) actual harm or substantial risk of harm by the acts or omissions of a person responsible for the child's welfare; or

(B) *exposing a child to the criminal distribution of dangerous drugs, as prohibited by 45-9-101, the criminal production or manufacture of dangerous drugs, as prohibited by 45-9-110, or the operation of an unlawful clandestine laboratory, as prohibited by 45-9-132.*

(ii) *For the purposes of this subsection (7), "dangerous drugs" means the compounds and substances described as dangerous drugs in Schedules I through IV in Title 50, chapter 32, part 2.*

(c) The term does not include self-defense, defense of others, or action taken to prevent the child from self-harm that does not constitute harm to a child's health or welfare.

(8) "Concurrent planning" means to work toward reunification of the child with the family while at the same time developing and implementing an alternative permanent plan.

(9) "Department" means the department of public health and human services provided for in 2-15-2201.

(10) "Family group conference" means a meeting that involves family members in either developing treatment plans or making placement decisions, or both.

(11) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

(a) inflicts or allows to be inflicted upon the child physical abuse, physical neglect, or psychological abuse or neglect;

(b) commits or allows to be committed sexual abuse or exploitation of the child;

(c) induces or attempts to induce a child into giving untrue testimony that the child or another child was abused or neglected by a parent or person responsible for the child's welfare;

(d) causes malnutrition or failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered financial or other reasonable means to do so;

(e) exposes or allows the child to be exposed to an unreasonable risk to the child's health or welfare by failing to intervene or eliminate the risk; or

(f) abandons the child.

(12) "Limited emancipation" means a status conferred on a youth by a court in accordance with 41-3-438 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older.

(13) "Parent" means a biological or adoptive parent or stepparent.

(14) "Parent-child legal relationship" means the legal relationship that exists between a child and the child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been terminated by competent judicial decree as provided in 40-6-234, Title 42, or part 6 of this chapter.

(15) "Permanent placement" means reunification of the child with the child's parent, adoption, placement with a legal guardian, placement with a fit and willing relative, or placement in another planned permanent living arrangement until the child reaches 18 years of age.

(16) "Physical abuse" means an intentional act, an intentional omission, or gross negligence resulting in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns, bone fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or function, or death.

(17) "Physical neglect" means either failure to provide basic necessities, including but not limited to appropriate and adequate nutrition, protective shelter from the elements, and appropriate clothing related to weather conditions, or failure to provide cleanliness and general supervision, or both.

(18) "Psychological abuse or neglect" means severe maltreatment through acts or omissions that are injurious to the child's emotional, intellectual, or psychological capacity to function, including acts of violence against another person residing in the child's home.

(19) "Reasonable cause to suspect" means cause that would lead a reasonable person to believe that child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known to the person.

(20) "Residential setting" means an out-of-home placement where the child typically resides for longer than 30 days for the purpose of receiving food, shelter, security, guidance, and, if necessary, treatment.

(21) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, sexual abuse, ritual abuse, or incest, as described in Title 45, chapter 5.

(b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area while attending to the sanitary or health care needs of that infant or toddler by a parent or other person responsible for the child's welfare.

(22) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625.

(23) (a) "Social worker" means an employee of the department who, before the employee's field assignment, has been educated or trained in a program of social work or a related field that includes cognitive and family systems treatment or who has equivalent verified experience or verified training in the investigation of child abuse, neglect, and endangerment.

(b) This definition does not apply to any provision of this code that is not in this chapter.

(24) "Treatment plan" means a written agreement between the department and the parent or guardian or a court order that includes action that must be taken to resolve the condition or conduct of the parent or guardian that resulted in the need for protective services for the child. The treatment plan may involve court services, the department, and other parties, if necessary, for protective services.

(25) "Unfounded" means that after an investigation, the investigating person has determined that the reported abuse, neglect, or exploitation has not occurred.

(26) (a) "Withholding of medically indicated treatment" means the failure to respond to an infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication, that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting the conditions.

(b) The term does not include the failure to provide treatment, other than appropriate nutrition, hydration, or medication, to an infant when, in the treating physician's or physicians' reasonable medical judgment:

- (i) the infant is chronically and irreversibly comatose;
  - (ii) the provision of treatment would:
    - (A) merely prolong dying;
    - (B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or
    - (C) otherwise be futile in terms of the survival of the infant; or
  - (iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane. For purposes of this subsection (26), "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children 1 year of age or older.
- (27) "Youth in need of care" means a youth who has been adjudicated or determined, after a hearing, to be or to have been abused, neglected, or abandoned."

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

Approved April 22, 2003

## CHAPTER NO. 459

[SB 366]

AN ACT REVISING THE RECLAMATION REQUIREMENTS FOR METAL MINES; AMENDING SECTION 82-4-336, 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 82-4-336, MCA, is amended to read:

**"82-4-336. Reclamation plan and specific reclamation requirements.** (1) Taking into account the site-specific conditions and circumstances, disturbed lands must be reclaimed consistent with the requirements and standards set forth in this section.

(2) The reclamation plan must provide that reclamation activities, particularly those relating to control of erosion, to the extent feasible, must be conducted simultaneously with the operation and in any case must be initiated promptly after completion or abandonment of the operation on those portions of the complex that will not be subject to further disturbance.

(3) In the absence of an order by the department providing a longer period, the plan must provide that reclamation activities must be completed not more than 2 years after completion or abandonment of the operation on that portion of the complex.

(4) In the absence of emergency or suddenly threatened or existing catastrophe, an operator may not depart from an approved plan without

previously obtaining from the department written approval for the proposed change.

(5) Provision must be made to avoid accumulation of stagnant water in the development area to the extent that it serves as a host or breeding ground for mosquitoes or other disease-bearing or noxious insect life.

(6) All final grading must be made with nonnoxious, nonflammable, noncombustible solids unless approval has been granted by the department for a supervised sanitary fill.

(7) When mining has left an open pit exceeding 2 acres of surface area and the composition of the floor or walls of the pit are likely to cause formation of acid, toxic, or otherwise pollutive solutions ("objectionable effluents") on exposure to moisture, the reclamation plan must include provisions that adequately provide for:

(a) insulation of all faces from moisture or water contact by covering the faces with material or fill not susceptible itself to generation of objectionable effluents in order to mitigate the generation of objectionable effluents; ~~or~~

(b) processing of any objectionable effluents in the pit before they are allowed to flow or be pumped out of the pit to reduce toxic or other objectionable ratios to a level considered safe to humans and the environment by the department; ~~or~~

(c) drainage of any objectionable effluents to settling or treatment basins when the objectionable effluents must be reduced to levels considered safe by the department before release from the settling basin; or

(d) absorption or evaporation of objectionable effluents in the open pit itself; and

(e) prevention of entrance into the open pit by persons or livestock lawfully upon adjacent lands by fencing, warning signs, and other devices that may reasonably be required by the department.

(8) Provisions for vegetative cover must be required in the reclamation plan if appropriate to the future use of the land as specified in the reclamation plan. The reestablished vegetative cover must meet county standards for noxious weed control.

(9) (a) With regard to disturbed land other than open pits and rock faces, the reclamation plan must provide for the reclamation of all disturbed land to comparable utility and stability as that of adjacent areas.

(b) With regard to open pits and rock faces, the reclamation plan must provide *sufficient measures* for reclamation to a condition:

~~(i) of stability structurally competent to withstand geologic and climatic conditions without significant failure that would be a threat to public safety and the environment;~~

~~(ii) that affords some utility to humans or the environment; and~~

~~(iii) that mitigates postreclamation visual contrasts between reclamation lands and adjacent lands.~~

~~(c) The reclamation of open pits and rock faces does not require backfilling, in whole or in part, except and only to the extent necessary to meet the requirements of the applicable provisions of Title 75, chapters 2 and 5~~

(i) of stability structurally competent to withstand geologic and climatic conditions without significant failure that would be a threat to public safety and the environment;

(ii) that affords some utility to humans or the environment;

(iii) that mitigates postreclamation visual contrasts between reclamation lands and adjacent lands; and

(iv) that mitigates or prevents undesirable offsite environmental impacts.

(c) The use of backfilling as a reclamation measure is neither required nor prohibited in all cases. A department decision to require any backfill measure must be based on whether and to what extent the backfilling is appropriate under the site-specific circumstances and conditions in order to achieve the standards described in subsection (9)(b).

(10) The reclamation plan must provide sufficient measures to ensure public safety and to prevent the pollution of air or water and the degradation of adjacent lands.

(11) A reclamation plan must be approved by the department if it adequately provides for the accomplishment of the requirements and standards set forth in this section.

(12) The reclamation plan must provide for permanent landscaping and contouring to minimize the amount of precipitation that infiltrates into disturbed areas *that are to be graded, covered, or vegetated*, including but not limited to tailings impoundments and waste rock dumps. The plan must also provide measures to prevent objectionable postmining ground water discharges.”

**Section 2. 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 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 permits and permit amendments approved by the department of environmental quality after September 30, 1995.

Approved April 21, 2003

## CHAPTER NO. 460

[SB 383]

AN ACT PROVIDING THAT CERTAIN ACTIVITIES ARE NOT PROHIBITED ACTIVITIES WITH REGARD TO WATER QUALITY; AMENDING SECTION 75-5-605, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 75-5-605, MCA, is amended to read:

**“75-5-605. Prohibited activity — exemption.** (1) It is unlawful to:

(a) cause pollution, as defined in 75-5-103, of any state waters or to place or cause to be placed any wastes where they will cause pollution of any state waters. Any placement of materials that is authorized by a permit issued by any

state or federal agency is not a placement of wastes within the prohibition of this subsection if the agency's permitting authority includes provisions for review of the placement of materials to ensure that it will not cause pollution of state waters.

(b) violate any provision set forth in a permit or stipulation, including but not limited to limitations and conditions contained in the permit;

(c) site and construct a sewage lagoon less than 500 feet from an existing water well;

(d) cause degradation of state waters without authorization pursuant to 75-5-303;

(e) violate any order issued pursuant to this chapter; or

(f) violate any provision of this chapter.

(2) Except for the permit exclusions identified in 75-5-401(5), it is unlawful to carry on any of the following activities without a current permit from the department:

(a) construct, modify, or operate a disposal system that discharges into any state waters;

(b) construct or use any outlet for the discharge of sewage, industrial wastes, or other wastes into any state waters; or

(c) discharge sewage, industrial wastes, or other wastes into any state waters.

(3) *Activities associated with routine or periodic maintenance, repair, replacement, or operation of irrigation water conveyance systems, including activities associated with any constructed channel, canal, ditch, pipeline, or portion of any constructed channel, canal, ditch, or pipeline, are not prohibited activities under this chapter if the activities do not result in exceeding water quality standards for any receiving water outside the irrigation water conveyance system. The diversion of water in accordance with an existing water right or permit pursuant to Title 85, chapter 2, is not a prohibited activity under this chapter.*

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

Approved April 22, 2003

## CHAPTER NO. 461

[SB 392]

AN ACT REQUIRING THAT WHEN THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS DEVELOPS A MANAGEMENT PLAN, THAT MANAGEMENT PLAN IS SUBJECT TO THE PROVISIONS OF THE MONTANA ENVIRONMENTAL POLICY ACT; AMENDING SECTION 87-1-201, 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 87-1-201, MCA, is amended to read:

**"87-1-201. (Temporary) Powers and duties.** (1) 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. It 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) The department shall enforce all the laws of the state respecting the protection, preservation, 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, 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 appropriated to and under control of 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, 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) The department is authorized to make, promulgate, and enforce reasonable rules and regulations not inconsistent with the provisions of 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.; and

(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.

(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. (Terminates March 1, 2006—sec. 6, Ch. 544, L. 1999.)

**87-1-201. (Effective March 1, 2006) Powers and duties.** (1) The department shall supervise all the wildlife, fish, game, game and nongame birds, waterfowl, and the game and fur-bearing animals of the state. It 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) The department shall enforce all the laws of the state respecting the protection, preservation, 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, 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 appropriated to and under control of 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, 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) The department is authorized to make, promulgate, and enforce reasonable rules and regulations not inconsistent with the provisions of 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.; and

(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.

(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.”

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

**Section 3. Applicability.** [This act] applies to all management plans that have not been finalized by the department of fish, wildlife, and parks prior to January 1, 2003.

Approved April 21, 2003

## CHAPTER NO. 462

[SB 423]

AN ACT REVISING LIMITS ON CAMPAIGN CONTRIBUTIONS TO CANDIDATES FOR STATE AND OTHER PUBLIC OFFICES; REVISING LIMITS ON CONTRIBUTIONS THAT LEGISLATIVE CANDIDATES MAY RECEIVE FROM POLITICAL COMMITTEES; INCREASING THE AMOUNT THAT TRIGGERS REPORTS FOR AGGREGATE CONTRIBUTIONS BY EACH CONTRIBUTOR; INCREASING THE UPPER LIMIT UNDER WHICH A POLITICAL COMMITTEE MAY CLAIM TO BE IN COMPLIANCE WITH VOLUNTARY EXPENDITURE LIMITS; PROVIDING AN INFLATION FACTOR FOR CONTRIBUTION AND SPENDING LIMITS; INCREASING THE FINE FOR EXCEEDING THE EXPENDITURE LIMITS; AND AMENDING SECTIONS 13-37-216, 13-37-218, 13-37-229, AND 13-37-250, MCA.

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

**Section 1.** Section 13-37-216, MCA, is amended to read:

**“13-37-216. Limitations on contributions.** (1) (a) Aggregate contributions for each election in a campaign by a political committee or by an individual, other than the candidate, to a candidate are limited as follows:

(i) for candidates filed jointly for the office of governor and lieutenant governor, not to exceed ~~\$400~~ \$500;

(ii) for a candidate to be elected for state office in a statewide election, other than the candidates for governor and lieutenant governor, not to exceed ~~\$200~~ \$250;

(iii) for a candidate for any other public office, not to exceed ~~\$100~~ \$130.

(b) A contribution to a candidate includes contributions made to the candidate's committee and to any political committee organized on the candidate's behalf.

(2) (a) A political committee that is not independent of the candidate is considered to be organized on the candidate's behalf. For the purposes of this section, an independent committee means a committee ~~which that~~ is not specifically organized on behalf of a particular candidate or ~~which that~~ is not controlled either directly or indirectly by a candidate or candidate's committee and ~~which that~~ does not act jointly with a candidate or candidate's committee in conjunction with the making of expenditures or accepting contributions.

(b) A leadership political committee maintained by a political officeholder is considered to be organized on the political officeholder's behalf.

(3) All political committees except those of political party organizations are subject to the provisions of subsections (1) and (2). For purposes of this subsection, "political party organization" means any political organization that was represented on the official ballot at the most recent gubernatorial election. Political party organizations may form political committees that are subject to the following aggregate limitations from all political party committees:

(a) for candidates filed jointly for the offices of governor and lieutenant governor, not to exceed ~~\$15,000~~ \$18,000;

(b) for a candidate to be elected for state office in a statewide election, other than the candidates for governor and lieutenant governor, not to exceed ~~\$5,000~~ \$6,500;

(c) for a candidate for public service commissioner, not to exceed ~~\$2,000~~ \$2,600;

(d) for a candidate for the state senate, not to exceed ~~\$800~~ \$1,050;

(e) for a candidate for any other public office, not to exceed ~~\$500~~ \$650.

(4) A candidate may not accept any contributions in excess of the limits in this section.

(5) For purposes of this section, "election" means the general election or a primary election that involves two or more candidates for the same nomination. If there is not a contested primary, there is only one election to which the contribution limits apply. If there is a contested primary, then there are two elections to which the contribution limits apply."

**Section 2.** Section 13-37-218, MCA, is amended to read:

**"13-37-218. Limitations on receipts from political committees.** A candidate for the state senate may receive no more than ~~\$1,000~~ \$2,150 in total combined monetary contributions from all political committees contributing to the candidate's campaign, and a candidate for the state house of representatives may receive no more than ~~\$600~~ \$1,300 in total combined monetary contributions from all political committees contributing to the candidate's campaign. The limitations in this section must be multiplied by ~~the~~ an inflation factor ~~as defined in 15-30-101 for~~, which is determined by dividing the consumer price index for June of the year prior to the year in which ~~general elections are a~~ general election is held by the consumer price index for June 2003. The resulting figure must be rounded ~~off up or down~~ to the nearest \$50 increment. The commissioner shall publish the revised limitations as a rule. In-kind contributions must be included in computing these limitation totals. The limitation provided in this section does not apply to contributions made by a political party eligible for a primary election under 13-10-601."

**Section 3.** Section 13-37-229, MCA, is amended to read:

**"13-37-229. Disclosure of contributions received.** Each report required by this chapter shall disclose the following information:

~~(1)~~(1) the amount of cash on hand at the beginning of the reporting period;

~~(2)~~(2) the full name, mailing address, occupation, and employer, if any, of each person who has made aggregate contributions, other than loans, of ~~\$35~~ \$35 or more to a candidate or political committee, ~~(including the purchase of tickets and other items for events, such as dinners, luncheons, rallies, and similar fundraising events);~~

~~(3)~~(3) for each person identified under subsection ~~(2)~~ (2), the aggregate amount of contributions made by that person within the reporting period and the total amount of contributions made by that person for all reporting periods;

~~(4)~~(4) the total sum of individual contributions made to or for a political committee or candidate and not reported under subsections ~~(2) and (3) of this section~~ (2) and (3);

~~(5)~~(5) the name and address of each political committee or candidate from which the reporting committee or candidate received any transfer of funds, together with the amount and dates of all transfers;

~~(6)~~(6) each loan from any person during the reporting period, together with the full names, mailing addresses, occupations, and employers, if any, of the lender and endorsers, if any, and the date and amount of each loan;

~~(7)~~(7) the amount and nature of debts and obligations owed to a political committee or candidate, in the form prescribed by the commissioner;

~~(8)~~(8) an itemized account of proceeds that total less than ~~\$35~~ \$35 from a person from mass collections made at fundraising events;

~~(9)~~(9) each contribution, rebate, refund, or other receipt not otherwise listed under subsections ~~(2) through (8) of this section~~ (2) through (8) during the reporting period;

~~(10)~~(10) the total sum of all receipts received by or for the committee or candidate during the reporting period; and

~~(11)~~(11) other information that may be required by the commissioner to fully disclose the sources of funds used to support or oppose candidates or issues.”

**Section 4.** Section 13-37-250, MCA, is amended to read:

**“13-37-250. Voluntary spending limits.** (1) (a) The following statement may be used in printed matter and in broadcast advertisements and may appear in the voter information pamphlet prepared by the secretary of state: “According to the Office of the Commissioner of Political Practices, ..... is in compliance with the voluntary expenditure limits established under Montana law.”

(b) The treasurer of each political committee, as defined in 13-1-101(18)(b), who files a certification on a ballot issue pursuant to 13-37-201 may also file with the commissioner a sworn statement that the committee will not exceed the voluntary expenditure limits of this section. If a sworn statement is made, it must be filed with the commissioner within 30 days of the certification of the political committee.

(c) A political committee that has not filed a sworn statement with the commissioner may not distribute any printed matter or pay for any broadcast claiming to be in compliance with the voluntary expenditure limits of this section.

(d) A political committee may not use evidence of compliance with the voluntary expenditure limits of this section to imply to the public that the committee has received endorsement or approval by the state of Montana.

(2) For the purposes of this section, the expenditures made by a political committee consist of the aggregate total of the following during the calendar year:

(a) all committee loans or expenditures made by check or cash; and

(b) the dollar value of all in-kind contributions made or received by the committee.

(3) In order to be identified as a political committee in compliance with the voluntary expenditure limits of this section, the committee's expenditures, as described in subsection (2), may not exceed ~~5,000~~ *\$195,000*.

(4) A political committee that files with the commissioner a sworn statement to abide by the voluntary expenditure limits of this section but that exceeds those limits shall pay a fine of ~~5,000~~ *\$6,500* to the commissioner. This money must be deposited in a separate fund to be used to support the enforcement programs of the office of the commissioner.

(5) *After July 1, 2004, all limits on voluntary spending in this section must be multiplied by an inflation factor, which is determined by dividing the consumer price index for June of the year prior to the year in which the general election is held by the consumer price index for June 2003. The resulting figure must be rounded up or down to the nearest \$50 increment.*

**Section 5. Coordination instruction.** If Senate Bill No. 407 and [this act] are both passed and approved, then [section 42 of Senate Bill No. 407], amending 13-37-218, is void.

Approved April 21, 2003

## CHAPTER NO. 463

[SB 447]

AN ACT ELIMINATING THE TEST FOR LIABILITY FOR DISCLOSURE OF INFORMATION ABOUT AN EMPLOYEE'S OR FORMER EMPLOYEE'S PERFORMANCE; REPEALING SECTION 27-1-737, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

**Section 1. Repealer.** Section 27-1-737, MCA, is repealed.

**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. Effective date — applicability.** [This act] is effective on passage and approval and applies to causes of action arising on or after [the effective date of this act].

Approved April 21, 2003

## CHAPTER NO. 464

[SB 450]

AN ACT REVISING LAWS RELATED TO WORKERS' COMPENSATION; PROVIDING FOR DISCLOSURE AND COMMUNICATION OF HEALTH CARE INFORMATION FOR WORKERS' COMPENSATION PURPOSES WITHOUT PRIOR NOTICE TO THE INJURED EMPLOYEE; BARRING ATTORNEY FEES UNDER THE COMMON FUND DOCTRINE; EXCLUDING IMPAIRMENT RATINGS BASED EXCLUSIVELY ON PAIN;

INCREASING THE PERMANENT PARTIAL DISABILITY BENEFIT MAXIMUM ENTITLEMENT FROM 350 TO 375 WEEKS; AMENDING SECTIONS 39-71-604, 39-71-611, 39-71-612, 39-71-703, AND 50-16-527, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES.

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

**Section 1.** Section 39-71-604, MCA, is amended to read:

**“39-71-604. Application for compensation — disclosure and communication without prior notice of health care information.** (1) If a worker is entitled to benefits under this chapter, the worker shall file with the insurer all reasonable information needed by the insurer to determine compensability. It is the duty of the worker’s attending physician to lend all necessary assistance in making application for compensation and ~~such~~ proof of other matters ~~as that~~ may be required by the rules of the department without charge to the worker. The filing of forms or other documentation by the attending physician does not constitute a claim for compensation.

(2) *A signed claim for workers’ compensation or occupational disease benefits authorizes disclosure to the workers’ compensation insurer, as defined in 39-71-116, or to the agent of a workers’ compensation insurer by the health care provider. The disclosure authorized by this subsection authorizes the physician or other health care provider to disclose or release only information relevant to the claimant’s condition. Health care information relevant to the claimant’s condition may include past history of the complaints of or the treatment of a condition that is similar to that presented in the claim, conditions for which benefits are subsequently claimed, other conditions related to the same body part, or conditions that may affect recovery. A release of information related to workers’ compensation must be consistent with the provisions of this subsection. Authorization under this section is effective only as long as the claimant is claiming benefits. This subsection may not be construed to restrict the scope of discovery or disclosure of health care information, as allowed under the Montana Rules of Civil Procedure, by the workers’ compensation court or as otherwise provided by law.*

(3) *A signed claim for workers’ compensation or occupational disease benefits or a signed release authorizes a workers’ compensation insurer, as defined in 39-71-116, or the agent of the workers’ compensation insurer to communicate with a physician or other health care provider about relevant health care information, as authorized in subsection (2), by telephone, letter, electronic communication, in person, or by other means, about a claim and to receive from the physician or health care provider the information authorized in subsection (2) without prior notice to the injured employee, to the employee’s authorized representative or agent, or in the case of death, to the employee’s personal representative or any person with a right or claim to compensation for the injury or death.*

~~(2)~~(4) *If death results from an injury, the parties entitled to compensation or someone in their behalf shall file a claim with the insurer. The claim must be accompanied with proof of death and proof of relationship, showing the parties entitled to compensation, certificate of the attending physician, if any, and such other proof as may be required by the department.”*

**Section 2.** Section 39-71-611, MCA, is amended to read:

**“39-71-611. Costs and attorneys’ attorney fees payable on denial of claim or termination of benefits later found compensable — barring of attorney fees under common fund and other doctrines.** (1) The insurer shall pay reasonable costs and attorney fees as established by the workers’ compensation court if:

(a) the insurer denies liability for a claim for compensation or terminates compensation benefits;

(b) the claim is later adjudged compensable by the workers’ compensation court; and

(c) in the case of ~~attorneys’~~ attorney fees, the workers’ compensation court determines that the insurer’s actions in denying liability or terminating benefits were unreasonable.

(2) A finding of unreasonableness against an insurer made under this section does not constitute a finding that the insurer acted in bad faith or violated the unfair trade practices provisions of Title 33, chapter 18.

(3) *Attorney fees may only be awarded under the provisions of subsection (1) and may not be awarded under the common fund doctrine or any other action or doctrine in law or equity.”*

**Section 3.** Section 39-71-612, MCA, is amended to read:

**“39-71-612. Costs and attorneys’ attorney fees that may be assessed against insurer by workers’ compensation judge — barring of attorney fees under common fund or other doctrines** (1) If an insurer pays or submits a written offer of payment of compensation under chapter 71 or 72 of this title but controversy relates to the amount of compensation due, the case is brought before the workers’ compensation judge for adjudication of the controversy, and the award granted by the judge is greater than the amount paid or offered by the insurer, a reasonable ~~attorney’s fee~~ attorney fees and costs as established by the workers’ compensation judge if the case has gone to a hearing may be awarded by the judge in addition to the amount of compensation.

(2) An award of ~~attorneys’~~ attorney fees under subsection (1) may ~~only~~ be made *only* if it is determined that the actions of the insurer were unreasonable. Any written offer of payment made 30 days or more before the date of hearing must be considered a valid offer of payment for the purposes of this section.

(3) A finding of unreasonableness against an insurer made under this section does not constitute a finding that the insurer acted in bad faith or violated the unfair trade practices provisions of Title 33, chapter 18.

(4) *Attorney fees may only be awarded under the provisions of subsections (1) and (2) and may not be awarded under the common fund doctrine or any other action or doctrine in law or equity.”*

**Section 4.** Section 39-71-703, MCA, is amended to read:

**“39-71-703. Compensation for permanent partial disability.** (1) If an injured worker suffers a permanent partial disability and is no longer entitled to temporary total or permanent total disability benefits, the worker is entitled to a permanent partial disability award if that worker:

(a) has an actual wage loss as a result of the injury; and

(b) has a permanent impairment rating that:

(i) *is not based exclusively on complaints of pain;*

~~(i)~~(ii) is established by objective medical findings; and

~~(ii)~~(iii) is more than zero as determined by the latest edition of the American medical association Guides to the Evaluation of Permanent Impairment.

(2) When a worker receives an impairment rating as the result of a compensable injury and has no actual wage loss as a result of the injury, the worker is eligible for an impairment award only.

(3) ~~The Beginning July 1, 2003, the~~ permanent partial disability award must be arrived at by multiplying the percentage arrived at through the calculation provided in subsection (5) by ~~350~~ 375 weeks.

(4) A permanent partial disability award granted an injured worker may not exceed a permanent partial disability rating of 100%.

(5) The percentage to be used in subsection ~~(3)~~ (4) must be determined by adding all of the following applicable percentages to the impairment rating:

(a) if the claimant is 40 years of age or younger at the time of injury, 0%; if the claimant is over 40 years of age at the time of injury, 1%;

(b) for a worker who has completed less than 12 years of education, 1%; for a worker who has completed 12 years or more of education or who has received a graduate equivalency diploma, 0%;

(c) if a worker has no actual wage loss as a result of the industrial injury, 0%; if a worker has an actual wage loss of \$2 or less an hour as a result of the industrial injury, 10%; if a worker has an actual wage loss of more than \$2 an hour as a result of the industrial injury, 20%. Wage loss benefits must be based on the difference between the actual wages received at the time of injury and the wages that the worker earns or is qualified to earn after the worker reaches maximum healing.

(d) if a worker, at the time of the injury, was performing heavy labor activity and after the injury the worker can perform only light or sedentary labor activity, 5%; if a worker, at the time of injury, was performing heavy labor activity and after the injury the worker can perform only medium labor activity, 3%; if a worker was performing medium labor activity at the time of the injury and after the injury the worker can perform only light or sedentary labor activity, 2%.

(6) The weekly benefit rate for permanent partial disability is  $66 \frac{2}{3}$ % of the wages received at the time of injury, but the rate may not exceed one-half the state's average weekly wage. The weekly benefit amount established for an injured worker may not be changed by a subsequent adjustment in the state's average weekly wage for future fiscal years.

(7) If a worker suffers a subsequent compensable injury or injuries to the same part of the body, the award payable for the subsequent injury may not duplicate any amounts paid for the previous injury or injuries.

(8) If a worker is eligible for a rehabilitation plan, permanent partial disability benefits payable under this section must be calculated based on the wages that the worker earns or would be qualified to earn following the completion of the rehabilitation plan.

(9) As used in this section:

(a) "heavy labor activity" means the ability to lift over 50 pounds occasionally or up to 50 pounds frequently;



(b) “medium labor activity” means the ability to lift up to 50 pounds occasionally or up to 25 pounds frequently;

(c) “light labor activity” means the ability to lift up to 20 pounds occasionally or up to 10 pounds frequently; and

(d) “sedentary labor activity” means the ability to lift up to 10 pounds occasionally or up to 5 pounds frequently.”

**Section 5.** Section 50-16-527, MCA, is amended to read:

**“50-16-527. Patient authorization — retention — effective period — exception — communication without prior notice for workers’ compensation purposes.** (1) A health care provider shall retain each authorization or revocation in conjunction with any health care information from which disclosures are made.

(2) Except for authorizations to provide information to third-party health care payors, an authorization may not permit the release of health care information relating to health care that the patient receives more than 6 months after the authorization was signed.

(3) Health care information disclosed under an authorization is otherwise subject to this part. An authorization becomes invalid after the expiration date contained in the authorization, which may not exceed 30 months. If the authorization does not contain an expiration date, it expires 6 months after it is signed.

(4) Notwithstanding subsections (2) and (3), a signed claim for workers’ compensation or occupational disease benefits authorizes disclosure to the workers’ compensation insurer, as defined in 39-71-116, or to the agent of a workers’ compensation insurer by the health care provider. The disclosure authorized by this subsection authorizes the physician or other health care provider to disclose or release only information relevant to the claimant’s condition. Health care information relevant to the claimant’s condition may include past history of the complaints of or the treatment of a condition that is similar to that presented in the claim, conditions for which benefits are subsequently claimed, other conditions related to the same body part, or conditions that may affect recovery. A release of information related to workers’ compensation must be consistent with the provisions of this subsection. Authorization under this section is effective only as long as the claimant is claiming benefits. This subsection may not be construed to restrict the scope of discovery or disclosure of health care information as allowed under the Montana Rules of Civil Procedure, by the workers’ compensation court, or as otherwise provided by law.

(5) *A signed claim for workers’ compensation or occupational disease benefits or a signed release authorizes a workers’ compensation insurer, as defined in 39-71-116, or the agent of the workers’ compensation insurer to communicate with a physician or other health care provider about relevant health care information, as authorized in subsection (4), by telephone, letter, electronic communication, in person, or by other means, about a claim and to receive from the physician or health care provider the information authorized in subsection (4) without prior notice to the injured employee, to the employee’s authorized representative or agent, or in the case of death, to the employee’s personal representative or any person with a right or claim to compensation for the injury or death.”*

**Section 6. Effective date — applicability dates.** (1) [This act] is effective on passage and approval.

(2) [Sections 2, 3, 4(1), 4(2), and 4(4) through 4(9)] apply to injuries that occur on or after [the effective date of this act].

(3) [Section 4(3)] applies to claims for injuries occurring on or after July 1, 2003.

(4) [Sections 1 and 5] apply retroactively, within the meaning of 1-2-109, to injuries occurring before [the effective date of this act].

Approved April 21, 2003

## CHAPTER NO. 465

[HB 199]

AN ACT AUTHORIZING A DRIVER TO POST A DRIVER'S LICENSE IN LIEU OF BAIL FOR TRAFFIC OFFENSES; REVISING LAW ENFORCEMENT AND DRIVER'S LICENSE LAWS TO COORDINATE WITH THE PRIVILEGE OF POSTING A LICENSE IN LIEU OF BAIL; REPLACING THE DRIVER'S LICENSE REINSTATEMENT FEE WITH AN ADMINISTRATIVE FEE; AND AMENDING SECTIONS 44-1-1101, 44-1-1102, 46-9-302, 46-9-401, 61-5-214, 61-5-215, AND 61-5-216, MCA.

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

**Section 1.** Section 44-1-1101, MCA, is amended to read:

**"44-1-1101. Duty of patrol officer upon making an arrest.** Upon making an arrest, a patrol officer shall:

(1) deliver the offender to the nearest justice of the peace during office hours or to the county jail;

(2) give the offender a summons describing the nature of the offense with instructions ~~thereon~~ for the offender to report to the nearest justice of the peace; or

(3) (a) accept bail determined pursuant to Title 46, chapter 9, part 3; or

(b) *with the offender's permission, accept the offender's driver's license in lieu of bail if the summons describes a violation of any offense in Title 61, chapters 3 through 10, except chapter 8, part 4, and if the offender is the holder of an unexpired driver's license.*

**Section 2.** Section 44-1-1102, MCA, is amended to read:

**"44-1-1102. Procedure when patrol officer accepts bail or driver's license in lieu of bail.** (1) If the patrol officer accepts bail, ~~he~~ *the patrol officer* shall give a signed receipt to the offender, setting forth the amount received. The patrol officer shall then deliver the bail money to the justice of the peace before whom the offender is to appear, and the justice of the peace shall give a receipt to the patrol officer for the amount of bail money delivered. After the filing of the complaint and the appearance of the defendant, the justice of the peace shall assume jurisdiction and may set and accept further bail bond.

(2) *If the patrol officer accepts an unexpired driver's license in lieu of bail, the patrol officer shall give the offender a signed driving permit, in a form prescribed by the department. The permit must acknowledge the officer's acceptance of the*

*offender's driver's license and serves as a valid temporary driving permit authorizing the operation of a motor vehicle by the offender. The permit is effective as of the date the permit is signed and remains in effect through the date of the appearance listed on the permit. The patrol officer shall deliver the driver's license to the justice of the peace before whom the offender is to appear, and the justice of the peace shall give a receipt to the patrol officer acknowledging delivery of the offender's driver's license to the court. After the filing of the complaint and the appearance of the defendant, the justice of the peace shall assume jurisdiction and may extend the date of the driving permit for a period up to 6 months from the defendant's initial appearance date.*

*(3) The judge shall return a driver's license that has been accepted in lieu of bail to a defendant after:*

*(a) the required bail has been posted or there has been a final determination of the charge; and*

*(b) if the defendant pleaded guilty or was convicted, a \$25 administrative fee has been paid to the court."*

**Section 3.** Section 46-9-302, MCA, is amended to read:

**"46-9-302. Bail schedule — acceptance by peace officer.** (1) A judge may establish and post a schedule of bail for offenses over which the judge has original jurisdiction. A person may not be released on bail without first appearing before the judge when the offense is:

(a) any assault on a partner or family member, as partner or family member is defined in 45-5-206;

(b) stalking, as defined in 45-5-220; or

(c) violation of an order of protection, as defined in 45-5-626.

(2) A peace officer may:

(a) accept bail on behalf of a judge:

~~(a)~~(i) in accordance with the bail schedule established under subsection (1);  
or

~~(b)~~(ii) whenever the warrant of arrest specifies the amount of bail; or

*(b) with the offender's permission, accept an unexpired driver's license in lieu of bail for a violation of any offense in Title 61, chapters 3 through 10, except chapter 8, part 4, as provided in subsection (4).*

(3) Whenever a peace officer accepts bail, the officer shall give a signed receipt to the offender setting forth the bail received. The peace officer shall then deliver the bail to the judge before whom the offender is to appear, and the judge shall give a receipt to the peace officer for the bail delivered.

*(4) Whenever a peace officer accepts an unexpired driver's license in lieu of bail, the peace officer shall give the offender a signed driving permit, in a form prescribed by the department. The permit must acknowledge the officer's acceptance of the offender's driver's license and serves as a valid temporary driving permit authorizing the operation of a motor vehicle by the offender. The permit is effective as of the date the permit is signed and remains in effect through the date of the appearance listed on the permit. The peace officer shall deliver the driver's license to the judge before whom the offender is to appear, and the judge shall give the peace officer a receipt acknowledging delivery of the offender's driver's license to the court. After the filing of the complaint and the appearance of the defendant, the judge shall assume jurisdiction and may extend*

the date of the driving permit for a period of up to 6 months from the defendant's initial appearance date.

(5) The judge shall return a driver's license that has been accepted in lieu of bail to a defendant after:

(a) the required bail has been posted or there has been a final determination of the charge; and

(b) if the defendant pleaded guilty or was convicted, a \$25 administrative fee has been paid to the court."

**Section 4.** Section 46-9-401, MCA, is amended to read:

**"46-9-401. Forms of bail.** (1) Bail may be furnished in the following ways:

(a) by a deposit with the court of an amount equal to the required bail of cash, stocks, bonds, certificates of deposit, or other personal property approved by the court;

(b) by pledging real estate situated within the state with an unencumbered equity, not exempt, owned by the defendant or sureties at a value double the amount of the required bail;

(c) by posting a written undertaking executed by the defendant and by two sufficient sureties; ~~or~~

(d) by posting a commercial surety bond executed by the defendant and by a qualified agent for and on behalf of the surety company; or

(e) by posting an offender's driver's license in lieu of bail if the summons describes a violation of any offense in Title 61, chapters 3 through 10, except chapter 8, part 4, and if the offender is the holder of an unexpired driver's license.

(2) The amount of the bond must ensure the appearance of the defendant at all times required through all stages of the proceeding including trial de novo, if any, and unless the bond is denied by the court pursuant to 46-9-107, must remain in effect until final sentence is pronounced in open court.

(3) ~~Nothing in this~~ This chapter ~~prohibits~~ does not prohibit a surety from surrendering the defendant pursuant to 46-9-510 in a case in which the surety feels insecure in accepting liability for the defendant.

(4) Whenever a driver's license is accepted in lieu of bail, the judge shall return the driver's license to the defendant after:

(a) the required bail has been posted or there has been a final determination of the charge; and

(b) if the defendant pleaded guilty or was convicted, a \$25 administrative fee has been paid to the court."

**Section 5.** Section 61-5-214, MCA, is amended to read:

**"61-5-214. Mandatory suspension for failure to appear or pay fine — administrative fee — notice.** (1) The department shall suspend the driver's license or driving privilege of a person immediately upon receipt of a certified copy of a docket page or other sufficient evidence report from the court, certified under penalty of law and in a form prescribed by the department, that the person:

(a) is charged with or convicted of a violation of chapters 3 through 10 of this title;

- (b) (i) failed to post the set bond amount or appear upon an issued complaint, summons, or court order; ~~or~~
- (ii) after posting a driver's license in lieu of bail, failed to appear upon an issued complaint, summons, or court order; or
- ~~(ii)~~(iii) when assessed a fine, costs, or restitution of \$100 or more, failed to pay the fine, costs, or restitution; and
- (c) received prior written notice that the driver's license or driving privileges of the person ~~will~~ would be suspended upon:
- (i) a failure to post bond or appear on an issued complaint, summons, or court order;
- (ii) failure to appear after posting a driver's license in lieu of bond; or
- (iii) ~~upon a~~ failure to pay assessed fines, costs, or restitution.
- (2) The suspension continues in effect until the court notifies the department that:
- (a) the person has paid the reinstatement fee and either appeared in court or paid the assessed fines, costs, or restitution; and
- (b) the person has paid the court an administrative fee of \$25 if the court was holding the offender's driver's license in lieu of bail under 44-1-1102, 46-9-302, or 46-9-401.
- (3) The notice required under this section may be included on the summons or complaint and notice to appear form given to the person when charges are initially filed or may be contained in a court order, either hand-delivered to the person while in court or sent by first-class mail, postage prepaid, to the most current address for that person received by or on record with the court. The initial notice must be followed by a written warning from the court, sent by first-class mail, advising the person that a license suspension is imminent and of the probable consequences of a suspension unless the person appears or pays within a specified number of days.
- (4) The court shall deposit any administrative fee received under subsection (2)(b) in the appropriate county or city general fund."

**Section 6.** Section 61-5-215, MCA, is amended to read:

**"61-5-215. Provisional licenses prohibited — reinstatement fee.** (1) ~~No~~ A provisional, restricted, or probationary license may *not* be issued upon a suspension under 61-5-214.

~~(2) A person whose license is suspended under 61-5-214 shall pay a reinstatement fee of \$25 to the court for deposit in the state general fund."~~

**Section 7.** Section 61-5-216, MCA, is amended to read:

**"61-5-216. Reinstatement of license.** Upon receipt of notification from the court that the operator has appeared, posted the bond, or paid the fine, costs, or restitution amounts and, *if applicable*, the ~~reinstatement~~ administrative fee, the department shall immediately reinstate the license, unless the operator otherwise is not entitled to reinstatement."

**Section 8. Coordination instruction.** If House Bill No. 215 and [this act] are both passed and approved, then [section 7 of this act], amending 61-5-216, is amended to read:

**"Section 7.** Section 61-5-216, MCA, is amended to read:

**“61-5-216. Reinstatement of license.** Upon receipt of notification from the court that the operator has appeared, posted the bond, or paid the fine, costs, or restitution amounts *and has paid the administrative fee required under 61-5-214 and, if the reinstatement fee required under 61-2-107 or [section 1 of House Bill No. 215] has been paid,* the department shall ~~immediately~~ reinstate the license, unless the operator otherwise is not entitled to reinstatement.”

Approved April 23, 2003

## CHAPTER NO. 466

[HB 249]

AN ACT ALLOWING CITIES, TOWNS, AND CONSOLIDATED GOVERNMENTS TO ADOPT PLANS TO CONTROL, REMOVE, AND RESTRICT GAME ANIMALS WITHIN THE BOUNDARIES OF A CITY, TOWN, OR PORTION OF A CONSOLIDATED GOVERNMENT THAT WAS ORIGINALLY A CITY OR TOWN; PROVIDING AN EXEMPTION TO THE POWERS DENIED LOCAL GOVERNMENT WITH RESPECT TO CONTROLLING, REMOVING, AND RESTRICTING GAME ANIMALS; PROVIDING AN EXEMPTION TO THE RESTRICTION THAT A CONSOLIDATED GOVERNMENT MUST ADOPT EITHER A CITY OR COUNTY PROVISION; REQUIRING APPROVAL BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS PRIOR TO DEVELOPING AND IMPLEMENTING A PROGRAM FOR THE CONTROL, REMOVAL, AND RESTRICTION OF GAME ANIMALS FROM CITIES, TOWNS, OR CONSOLIDATED GOVERNMENTS THAT HAVE ADOPTED A PLAN; AMENDING SECTIONS 7-1-111, 7-3-1105, 7-3-1222, AND 7-5-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Restriction of wildlife.** A city or town may adopt a plan to control, remove, and restrict game animals, as defined in 87-2-101, within the boundaries of the city or town limits for public health and safety purposes. Upon adoption of a plan, the city or town shall notify the department of fish, wildlife, and parks of the plan. If the department of fish, wildlife, and parks approves the plan or approves the plan with conditions, the city or town may implement the plan as approved or as approved with conditions.

**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 (labor, collective bargaining for public employees, unemployment compensation, or workers' compensation), 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 public convenience and necessity;

(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 environmental compatibility and public need;

(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 (professions and occupations) as prerequisites to the carrying on of a profession or occupation;

(12) *except as provided in 7-3-1105, 7-3-1222, or [section 1],* any power that applies to or affects Title 75, chapter 7, part 1 (streambeds), or Title 87 (fish and wildlife); and

(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."

**Section 3.** Section 7-3-1105, MCA, is amended to read:

**"7-3-1105. Rules, ordinances, and resolutions of consolidated unit.**

(1) Within 2 years after ratification of the consolidation, the governing body of the consolidated unit of local government shall revise, repeal, or reaffirm all rules, ordinances, and resolutions in force within the participating county, cities, and towns at the time of consolidation. Each rule, ordinance, or resolution in force at the time of consolidation shall remain in force within the former geographic jurisdiction until superseded by action of the new governing body. Ordinances and resolutions relating to public improvements to be paid for in whole or in part by special assessments may not be repealed.

(2) *A consolidated government may adopt, for the portion of the consolidated government that was formerly a city or town, a plan to control, remove, and restrict game animals, as defined in 87-2-101, within the defined boundaries of the city or town limits for public health and safety purposes. Upon adoption of a plan, the consolidated government shall notify the department of fish, wildlife, and parks of the plan. If the department of fish, wildlife, and parks approves the plan or approves the plan with conditions, the consolidated government may implement the plan as approved or as approved with conditions."*

**Section 4.** Section 7-3-1222, MCA, is amended to read:

**“7-3-1222. Procedure to enact ordinances and resolutions.** (1) Ordinances and resolutions ~~shall~~ *must* be introduced in the commission only in written or printed form. All ordinances or resolutions, except ordinances making appropriations, ~~shall~~ *must* be confined to one subject, which ~~shall~~ *must* be clearly expressed in the title, except as provided in 7-3-1226. Ordinances making appropriations ~~shall~~ *must* be confined to the subject of appropriations. ~~No~~ An ordinance ~~shall~~ *may not* be passed until it has been read on 3 separate days, unless the requirement of reading on 3 separate days has been dispensed with by a vote of not less than two-thirds of the members of the commission. The final reading ~~shall~~ *must* be in full unless a written or printed copy of the measure ~~shall have~~ *has* been furnished to each member of the commission prior to ~~such~~ *final* reading.

(2) The enacting clause of all ordinances passed by the commission ~~shall~~ *must* be: “Be it ordained by the city and county of ....”, and the enacting clause of all ordinances submitted by the initiative ~~shall~~ *must* be: “Be it ordained by the people of the city and county of .....”.

(3) ~~No~~ An ordinance, resolution, or section ~~thereof~~ *shall of an ordinance or resolution may not* be revised or amended unless the new ordinance or resolution contains the entire ordinance, resolution, or section ~~thereof~~ *of the ordinance or resolution* as revised or amended.

(4) Every ordinance, or resolution, upon its final passage, ~~shall~~ *must* be recorded in a book kept for that purpose and ~~shall~~ *must* be authenticated by the signatures of the president and clerk. Within 10 days after its final passage, each ordinance or resolution ~~shall~~ *must* be published at least once in ~~such~~ *the* manner ~~as that~~ the commission may provide by ordinance.

(5) Initiated ordinances adopted by the electors ~~shall~~ *must* be published and may be amended or repealed by the commission, as in the case of other ordinances.

(6) *A consolidated government may adopt, for the portion of the consolidated government that was formerly a city or town, a plan to control, remove, and restrict game animals, as defined in 87-2-101, within the boundaries that are within the city or town limits for public health and safety purposes. Upon adoption of a plan, the consolidated government shall notify the department of fish, wildlife, and parks of the plan. If the department of fish, wildlife, and parks approves the plan or approves the plan with conditions, the consolidated government may implement the plan as approved or as approved with conditions.”*

**Section 5.** Section 7-5-201, MCA, is amended to read:

**“7-5-201. Operation of self-government consolidated units of local government.** (1) ~~Whenever~~ *Except as provided in 7-3-1105(2) and 7-3-1222(6), whenever* existing law contains different provisions and procedures for the functioning of counties and municipalities, including but not limited to such areas as election procedures, issuance of bonds, adoption of budgets, creation of special districts, levying of taxes, and provision of services, the governing body of a self-government consolidated unit of local government which contains at least one county and one municipality shall by ordinance adopt either the county or municipality provisions. The ordinance may provide for necessary changes in the statutes to accommodate the structure of the consolidated unit. This subsection applies to self-government consolidated units only in those



areas where ~~such~~ the units are subject to state law under 7-1-111 through 7-1-114.

(2) A combination of county and municipal offices in a self-government consolidated unit may be accomplished by ordinance whenever ~~such~~ a combination is necessary for carrying out a duty assigned by state law to the local government. Whenever state law imposes a duty upon a specific official or employee of a self-government consolidated unit of local government and the local government under its adopted alternative form of government does not have ~~such an~~ that official or employee, the governing body may by ordinance assign that duty to the appropriate official or employee of the local government. The governing body of any self-government consolidated unit of local government may by ordinance assign responsibility to carry out any function or provide any service required by state law to one or more departments, officers, or employees of the local government notwithstanding the fact that the state law may assign the function or service to a specific office.”

**Section 6. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 7, chapter 31, part 41, and the provisions of Title 7, chapter 31, part 41, apply to [section 1].

**Section 7. 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 8. Effective date.** [This act] is effective on passage and approval.

Approved April 23, 2003

## CHAPTER NO. 467

[HB 315]

AN ACT PROVIDING AN EXCEPTION FROM THE REQUIREMENT TO PAY STANDARD PREVAILING WAGES FOR AN EMPLOYER WHO, AS A NONPROFIT ORGANIZATION PROVIDING VOCATIONAL REHABILITATION, PERFORMS A PUBLIC WORKS CONTRACT FOR NONCONSTRUCTION SERVICES AND WHO EMPLOYS AN INDIVIDUAL WHOSE EARNING CAPACITY IS IMPAIRED BY A MENTAL, EMOTIONAL, OR PHYSICAL DISABILITY IF THE EMPLOYER CONFORMS WITH THE FEDERAL FAIR LABOR STANDARDS ACT AND PAYS THE INDIVIDUAL WAGES THAT ARE EQUAL TO OR ABOVE THE STATE'S MINIMUM WAGE; AMENDING SECTIONS 18-2-403 AND 18-2-407, 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 18-2-403, MCA, is amended to read:

**“18-2-403. Preference of Montana labor in public works — wages — tax-exempt project — federal exception.** (1) In every public works contract, there must be inserted in the bid specification and the public works contract a provision requiring the contractor to give preference to the employment of bona fide residents of Montana in the performance of the work.

(2) All public works contracts for construction services under subsection (1), except those for heavy and highway construction, that are conducted at the

project location or under special circumstances must contain a provision requiring the contractor to pay:

(a) the travel allowance that is in effect and applicable to the district in which the work is being performed; and

(b) the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions, that:

(i) meets the requirements of the Employee Retirement Income Security Act of 1974 and other bona fide programs approved by the United States department of labor; and

(ii) is in effect and applicable to the district in which the work is being performed.

(3) In every public works contract for heavy and highway construction, there must be inserted a provision to require the contractor to pay the heavy and highway construction wage rates established statewide for heavy and highway construction services conducted at the project location or under special circumstances.

(4) ~~All~~ Except as provided in subsection (5), all public works contracts for nonconstruction services under subsection (1) must contain a provision requiring the contractor to pay:

(a) the travel allowance that is in effect and applicable to the district in which the work is being performed; and

(b) the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions, that:

(i) meets the requirements of the Employee Retirement Income Security Act of 1974 and other bona fide programs approved by the United States department of labor; and

(ii) is in effect and applicable to the district in which the work is being performed.

(5) *An employer who, as a nonprofit organization providing individuals with vocational rehabilitation, performs a public works contract for nonconstruction services and who employs an individual whose earning capacity is impaired by a mental, emotional, or physical disability may pay the individual wages that are less than the standard prevailing wage if the employer complies with the provisions of section 214(c) of the Fair Labor Standards Act of 1938, 29 U.S.C. 214 and 29 CFR, part 525, and the wages paid are equal to or above the minimum wage required in 39-3-404.*

~~(5)~~(6) Transportation of goods, supplies, materials, and manufactured or fabricated items to or from the project location is not subject to payment of the standard prevailing rate of wages.

~~(6)~~(7) A contract, other than a public works contract, let for a project costing more than \$25,000 and financed from the proceeds of bonds issued under Title 17, chapter 5, part 15, or Title 90, chapter 5 or 7, ~~on or after July 1, 1993,~~ must contain a provision requiring the contractor to pay the standard prevailing wage rate in effect and applicable to the district in which the work is being performed unless the contractor performing the work has entered into a collective bargaining agreement covering the work to be performed.

~~(7)~~(8) A public works contract may not be let to any person, firm, association, or corporation refusing to execute an agreement with the provisions described in

subsections (1) through ~~(6)~~ (7) in it, provided that in public works contracts involving the expenditure of federal-aid funds, this part may not be enforced in a manner as to conflict with or be contrary to the federal statutes prescribing a labor preference to honorably discharged veterans of the armed forces and prohibiting as unlawful any other preference or discrimination among citizens of the United States.

~~(8)~~(9) Failure to include the provisions required by 18-2-422 in a public works contract relieves the contractor from the contractor's obligation to pay the standard prevailing wage rate and places the obligation on the public contracting agency."

**Section 2.** Section 18-2-407, MCA, is amended to read:

**"18-2-407. Forfeiture for failure to pay standard prevailing wage.** (1) ~~Any~~ Except as provided in 18-2-403, a contractor, subcontractor, or employer who pays workers or employees at less than the standard prevailing wage as established under the public works contract shall forfeit to the department a penalty at a rate of up to 20% of the delinquent wages plus fringe benefits, attorney fees, audit fees, and court costs. Money collected by the department under this section must be deposited in the general fund. A contractor, subcontractor, or employer shall also forfeit to the employee the amount of wages owed plus \$25 a day for each day that the employee was underpaid.

(2) Whenever it appears to the contracting agency or to the Montana commissioner of labor and industry that there is insufficient money due to the contractor or the employer under the terms of the contract to cover penalties, the Montana commissioner of labor and industry may, within 90 days after the filing of notice of completion of the project and its acceptance by the contracting agency, maintain an action in district court to recover all penalties and forfeitures due. This part does not prevent the individual worker who has been underpaid or the commissioner of labor and industry on behalf of all the underpaid workers from maintaining an action for recovery of the wages due under the contract as provided in Title 39, chapter 3, part 2, except that appeal of the hearings officer's decision is made directly to district court rather than to the board of personnel appeals."

**Section 3. Effective date — applicability.** [This act] is effective on passage and approval and applies to contracts entered into on or after [the effective date of this act].

Approved April 23, 2003

## CHAPTER NO. 468

[HB 545]

AN ACT ESTABLISHING STATUTORY WATER QUALITY PERMIT FEES FOR SUCTION DREDGE OPERATIONS; AUTHORIZING THE BOARD OF ENVIRONMENTAL REVIEW TO ADOPT RULES FOR SUCTION DREDGING SUBJECT TO THE PERMIT FEES; AMENDING SECTIONS 75-5-201, 75-5-516, AND 82-4-310, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 75-5-201, MCA, is amended to read:

**“75-5-201. Board rules authorized.** (1) (a) The board shall, subject to the provisions of 75-5-203, adopt rules for the administration of this chapter.

(b) *The board shall adopt rules that describe the location and the times of the year when suction dredging is permissible. These rules may be adopted only after consultation with the local conservation districts in the areas subject to the rule.*

(2) The board’s rules may include a fee schedule or system for assessment of administrative penalties as provided under 75-5-611.”

**Section 2.** Section 75-5-516, MCA, is amended to read:

**“75-5-516. Fees authorized for recovery — process — rulemaking.** (1) ~~The~~ *Except as provided in subsection (12), the* board shall by rule prescribe fees to be assessed by the department that are sufficient to cover the board’s and department’s documented costs, both direct and indirect, of:

(a) reviewing and acting upon an application for a permit, permit modification, permit renewal, certificate, license, or other authorization required by rule under 75-5-201 or 75-5-401;

(b) reviewing and acting upon a petition for a degradation allowance under 75-5-303;

(c) reviewing and acting upon an application for a permit, certificate, license, or other authorization for which an exclusion is provided by rule from the permitting requirements established under 75-5-401;

(d) enforcing the terms and conditions of a permit or authorization identified in subsections (1)(a) through (1)(c). If the permit or authorization is not issued, the department shall return this portion of any application fee to the applicant.

(e) conducting compliance inspections and monitoring effluent and ambient water quality; and

(f) preparing water quality rules or guidance documents.

(2) ~~The~~ *Except as provided in subsection (12), the* rules promulgated by the board under this section must include:

(a) a fee on all applications for permits or authorizations, as identified in subsections (1)(a) through (1)(c), that recovers to the extent permitted by this subsection (2) the department’s cost of reviewing and acting upon the applications. This fee may not be more than \$5,000 per discharge point for an application addressed under subsection (1), except that an application with multiple discharge points may be assessed a lower fee for those points according to board rule.

(b) an annual fee to be assessed according to the volume and concentration of waste discharged into state waters. The annual fee may not be more than \$3,000 per million gallons discharged per day on an annual average for any activity under permit or authorization, as described in subsection (1), except that:

(i) a permit or authorization with multiple discharge points may be assessed a lower fee for those points according to board rule; and

(ii) a facility that consistently discharges effluent at less than or equal to one-half of its effluent limitations and that is in compliance with other permit requirements, using the previous calendar year’s discharge data, is entitled to a 25% reduction in its annual permit fee. Proportionate reductions of up to 25% of the permit fee may be given to facilities that consistently discharge effluent at levels between 50% and 100% of their effluent limitations. However, a new permittee is not eligible for a fee reduction in its first year of operation, and a

permittee with a violation of any effluent limit during the previous calendar year is not eligible for a fee reduction for the following year.

(3) To the extent permitted under subsection (2)(b), the annual fee must be sufficient to pay the department's estimated cost of conducting all tasks described under subsection (1) after subtracting:

- (a) the fees collected under subsection (2)(a);
- (b) state general fund appropriations for functions administered under this chapter; and
- (c) federal grants for functions administered under this chapter.

(4) For purposes of subsection (3), the department's estimated cost of conducting the tasks described under subsection (1) is the amount authorized by the legislature for the department's water quality discharge permit programs.

(5) If the applicant or holder fails to pay a fee assessed under this section or rules adopted under this section within 90 days after the date established by rule for fee payment, the department may:

- (a) impose an additional assessment consisting of not more than 20% of the fee plus interest on the required fee computed as provided in 15-1-216; or
- (b) suspend the permit or exclusion. The department may lift the suspension at any time up to 1 year after the suspension occurs if the holder has paid all outstanding fees, including all penalties, assessments, and interest imposed under subsection (5)(a).

(6) Fees collected pursuant to this section must be deposited in an account in the special revenue fund type pursuant to 75-5-517.

(7) The department shall give written notice to each person assessed a fee under this section of the amount of fee that is assessed and the basis for the department's calculation of the fee. This notice must be issued at least 30 days prior to the due date for payment of the assessment.

(8) A holder of or an applicant for a permit, certificate, or license may appeal the department's fee assessment to the board within 20 days after receiving written notice of the department's fee determination under subsection (7). The appeal to the board must include a written statement detailing the reasons that the permit holder or applicant considers the department's fee assessment to be erroneous or excessive.

(9) If part of the department's fee assessment is not in dispute in an appeal filed under subsection (8), the undisputed portion of the fee must be paid to the department upon written request of the department.

(10) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing before the board under this section.

(11) A municipality may raise rates to cover costs associated with the fees prescribed in this section for a public sewer system without the hearing required in 69-7-111.

(12) (a) *The application fee assessed pursuant to this section for a suction dredge, as described in 82-4-310(2), may not be more than:*

- (i) *\$25 if it is owned and operated by a resident of this state; or*
- (ii) *\$100 if it is owned and operated by a nonresident of this state.*

(b) *The annual fee assessed pursuant to this section for a suction dredge, as described in 82-4-310(2), may not be more than:*

- (i) *\$25 if it is owned and operated by a resident of this state; or*
- (ii) *\$100 if it is owned and operated by a nonresident of this state.”*

**Section 3.** Section 82-4-310, MCA, is amended to read:

**“82-4-310. Exemption — scale and type of activity.** (1) A person is exempt from this part when the person is engaging in a mining activity that does not:

- (a) use motorized excavating equipment;
- (b) use blasting agents;
- (c) disturb more than 100 square feet or 50 cubic yards of material at any site;
- (d) leave unreclaimed sites that are less than 1 mile apart;
- (e) use mercury in any operations except in a contained facility that prevents the escape of any mercury into the environment; or
- (f) use a cyanide ore-processing reagent or other metal leaching solvents or reagents in any operations.

(2) A person is exempt from this part when the person is engaging in a mining activity using a suction dredge if:

- (a) the dredge in use has an intake of 4 inches in diameter or less;
- (b) the person does not operate the dredge beyond the area of the streambed that is naturally under water at the time of operation; and
- (c) the person has obtained for the activity:
  - (i) project approval pursuant to Title 75, chapter 7, part 1; and
  - (ii) a discharge permit issued pursuant to 75-5-402 *and has paid the applicable fee provided in 75-5-516(12).*

(3) This part does not apply to a person who, on land owned or controlled by that person, allows other persons to engage in mining activities if those activities cumulatively meet the requirements of subsection (1).”

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved April 23, 2003

## CHAPTER NO. 469

[HB 669]

AN ACT REVISING THE PARK DEDICATION REQUIREMENTS FOR SUBDIVISIONS; PROVIDING THAT A SUBDIVIDER MAY DEDICATE LAND OUTSIDE OF A SUBDIVISION; AND AMENDING SECTION 76-3-621, MCA.

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

**Section 1.** Section 76-3-621, MCA, is amended to read:

**“76-3-621. Park dedication requirement.** (1) Except as provided in 76-3-509 or subsections (2), (3), (6), and ~~(6)~~ (7) of this section, a subdivider shall dedicate to the governing body a cash or land donation equal to:

(a) 11% of the area of the land proposed to be subdivided into parcels of one-half acre or smaller;

(b) 7.5% of the area of the land proposed to be subdivided into parcels larger than one-half acre and not larger than 1 acre;

(c) 5% of the area of the land proposed to be subdivided into parcels larger than 1 acre and not larger than 3 acres; and

(d) 2.5% of the area of the land proposed to be subdivided into parcels larger than 3 acres and not larger than 5 acres.

(2) When a subdivision is located totally within an area for which density requirements have been adopted pursuant to a growth policy under chapter 1 or pursuant to zoning regulations under chapter 2, the governing body may establish park dedication requirements based on the community need for parks and the development densities identified in the growth policy or regulations. Park dedication requirements established under this subsection are in lieu of those provided in subsection (1) and may not exceed 0.03 acres per dwelling unit.

(3) A park dedication may not be required for:

(a) a minor subdivision;

(b) land proposed for subdivision into parcels larger than 5 acres;

(c) subdivision into parcels that are all nonresidential;

(d) a subdivision in which parcels are not created, except when that subdivision provides permanent multiple spaces for recreational camping vehicles, mobile homes, or condominiums; or

(e) a subdivision in which only one additional parcel is created.

(4) The governing body, in consultation with the subdivider and the planning board or park board that has jurisdiction, may determine suitable locations for parks and playgrounds and, giving due weight and consideration to the expressed preference of the subdivider, may determine whether the park dedication must be a land donation, cash donation, or a combination of both. When a combination of land donation and cash donation is required, the cash donation may not exceed the proportional amount not covered by the land donation.

(5) (a) In accordance with the provisions of subsections (5)(b) and (5)(c), the governing body shall use the dedicated money or land for development, acquisition, or maintenance of parks to serve the subdivision.

(b) The governing body may use the dedicated money to acquire, develop, or maintain, within its jurisdiction, parks or recreational areas or for the purchase of public open space or conservation easements only if:

(i) the park, recreational area, open space, or conservation easement is within a reasonably close proximity to the proposed subdivision; and

(ii) the governing body has formally adopted a park plan that establishes the needs and procedures for use of the money.

(c) The governing body may not use more than 50% of the dedicated money for park maintenance.

(6) The local governing body shall waive the park dedication requirement if:

(a) (i) the preliminary plat provides for a planned unit development or other development with land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the development; and

(ii) the area of the land and any improvements set aside for park and recreational purposes equals or exceeds the area of the dedication required under subsection (1);

(b) (i) the preliminary plat provides long-term protection of critical wildlife habitat; cultural, historical, or natural resources; agricultural interests; or aesthetic values; and

(ii) the area of the land proposed to be subdivided, by virtue of providing long-term protection provided for in subsection (6)(b)(i), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1); ~~or~~

(c) the area of the land proposed to be subdivided, by virtue of a combination of the provisions of subsections (6)(a) and (6)(b), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1); *or*

(d) (i) *the subdivider provides for land outside of the subdivision to be set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the subdivision; and*

(ii) *the area of the land and any improvements set aside for park and recreational uses equals or exceeds the area of dedication required under subsection (1).*

(7) *The local governing body may waive the park dedication requirement if:*

(a) *the subdivider provides land outside the subdivision that affords long-term protection of critical wildlife habitat, cultural, historical, or natural resources, agricultural interests, or aesthetic values; and*

(b) *the area of the land to be subject to long-term protection, as provided in subsection (7)(a), equals or exceeds the area of the dedication required under subsection (1).*

~~(7)~~(8) For the purposes of this section:

(a) "cash donation" is the fair market value of the unsubdivided, unimproved land; and

(b) "dwelling unit" means a residential structure in which a person or persons reside.

(9) *A land donation under this section may be inside or outside of the subdivision."*

Approved April 23, 2003

## CHAPTER NO. 470

[HB 677]

AN ACT CLARIFYING THE JURISDICTION OF JUSTICES' COURTS WITH REGARD TO VIOLATIONS OF THE NATURAL STREAMBED AND LAND PRESERVATION ACT OF 1975; CLARIFYING CRIMINAL FINES AND CIVIL PENALTIES; AMENDING SECTIONS 3-10-301, 3-10-601, AND 75-7-123, MCA; REPEALING SECTION 75-7-124, 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 3-10-301, MCA, is amended to read:

**“3-10-301. Civil jurisdiction.** (1) Except as provided in 3-11-103 and in subsection (2) of this section, the justices’ courts have jurisdiction:

(a) in actions arising on contract for the recovery of money only if the sum claimed does not exceed \$7,000, exclusive of court costs;

(b) in actions for damages not exceeding \$7,000, exclusive of court costs, for taking, detaining, or injuring personal property or for injury to real property when no issue is raised by the verified answer of the defendant involving the title to or possession of the real property;

(c) in actions for damages not exceeding \$7,000, exclusive of court costs, for injury to the person, except that, in actions for false imprisonment, libel, slander, criminal conversation, seduction, malicious prosecution, determination of paternity, and abduction, the justice of the peace does not have jurisdiction;

(d) in actions to recover the possession of personal property if the value of the property does not exceed \$7,000;

(e) in actions for a fine, penalty, or forfeiture not exceeding \$7,000<sup>7</sup> imposed by a statute or an ordinance of an incorporated city or town when no issue is raised by the answer involving the legality of any tax, impost, assessment, toll, or municipal fine;

(f) *in actions for a fine, penalty, or forfeiture not exceeding \$7,000 imposed by a statute or assessed by an order of a district for violation of Title 75, chapter 7, part 1;*

~~(g)~~ (g) in actions upon bonds or undertakings conditioned for the payment of money when the sum claimed does not exceed \$7,000, though the penalty may exceed that sum;

~~(h)~~ (h) to take and enter judgment for the recovery of money on the confession of a defendant when the amount confessed does not exceed \$7,000, exclusive of court costs;

~~(i)~~ (i) to issue temporary restraining orders, as provided in 40-4-121, and orders of protection, as provided in Title 40, chapter 15;

(j) *to issue orders to restore streams under Title 75, chapter 7, part 1, or to require payment of the actual cost for restoration of a stream if the restoration does not exceed \$7,000.*

(2) Justices’ courts do not have jurisdiction in civil actions that might result in a judgment against the state for the payment of money.”

**Section 2.** Section 3-10-601, MCA, is amended to read:

**“3-10-601. Collection and disposition of fines, penalties, forfeitures, and fees.** (1) ~~Each~~ *Except as provided in 75-7-123, a justice’s court shall collect the fees prescribed by law for justices’ courts and shall pay them into the county treasury of the county in which the justice of the peace holds office, on or before the 10th day of each month, to be credited to the general fund of the county.*

(2) Except as provided in 75-7-123 and subsection (4) of this section, all fines, penalties, and forfeitures that are required to be imposed, collected, or paid in a

justice's court must, for each calendar month, be paid by the justice's court on or before the 5th day of the following month to the treasurer of the county in which the justice's court is situated, except that they may be distributed as provided in 44-12-206 if imposed, collected, or paid for a violation of Title 45, chapter 9 or 10.

(3) Except as provided in 46-18-236(7) and 75-7-123, the county treasurer shall, as provided in 15-1-504, distribute money received under subsection (2) as follows:

(a) 50% to the department of revenue for deposit in the state general fund; and

(b) 50% to the county general fund.

(4) (a) The justice's court may contract with a private person or entity for the collection of any final judgment that requires a payment to the justice's court.

(b) In the event that a private person or entity is retained to collect a judgment, the justice's court may assign the judgment to the private person or entity and the private person or entity may, as an assignee, institute a suit or other lawful collection procedure and other postjudgment remedies in its own name.

(c) The justice's court may pay the private person or entity a reasonable fee for collecting the judgment."

**Section 3.** Section 75-7-123, MCA, is amended to read:

**"75-7-123. Penalties — restoration.** (1) A person who initiates a project without written consent of the supervisors, performs activities outside the scope of written consent of the supervisors, violates emergency procedures provided for in 75-7-113, or violates 75-7-106 is:

(a) guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed \$500; or ~~by a civil penalty~~

(b) ~~subject to a civil penalty~~ not to exceed \$500 for each day that person continues to ~~physically alter or modify the stream, and in~~ be in violation.

(2) *Each day of a continuing violation constitutes a separate violation. The maximum civil penalty is the jurisdictional amount for purposes of 3-10-301. A conservation district may work with a person who is subject to a civil penalty to resolve the amount of the penalty prior to initiating an enforcement action in justice's court to collect a civil penalty.*

(3) ~~In addition, that~~ to a fine or a civil penalty under subsection (1), the person:

(a) shall restore, at the discretion of the court, the damaged stream, as recommended by the supervisors, to as near its prior condition as possible; or

(b) *is civilly liable for the amount necessary to restore the stream. The amount of the liability may be collected in an action instituted pursuant to 3-10-301 if the amount of liability does not exceed \$7,000. If the amount of liability for restoration exceeds \$7,000, then the action must be brought in district court.*

(4) *Money recovered by a conservation district or a county attorney, whether as a fine or a civil penalty, must be deposited in the depository of district funds provided for in 76-15-523, unless upon order of a justice's court the money is directed to be deposited pursuant to 3-10-601."*

**Section 4. Repealer.** Section 75-7-124, MCA, is repealed.

**Section 5. Effective date.** [This act] is effective on passage and approval.

**Section 6. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to all notices of projects pending before a conservation district on [the effective date of this act].

Approved April 23, 2003

## CHAPTER NO. 471

[HB 758]

AN ACT GENERALLY REVISING THE LAWS RELATED TO VIDEO GAMBLING MACHINES; IMPOSING AN ANNUAL PERMIT SURCHARGE FEE BASED ON THE NUMBER OF VIDEO GAMBLING MACHINES ON THE PREMISES; PROVIDING FOR THE PRORATION OF THE FEE; PROVIDING THAT THE FEE BE DEPOSITED IN THE STATE GENERAL FUND; EXEMPTING ESTABLISHMENTS THAT HAVE PERMITTED VIDEO GAMBLING MACHINES ON THE PREMISES FROM LOCAL GOVERNMENT ORDINANCES ON SMOKING THAT ARE MORE RESTRICTIVE THAN STATE LAWS ON SMOKING; AMENDING SECTION 23-5-612, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES.

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

**Section 1. Premises with video gambling machines — local smoking ordinance no more restrictive than state law.** An establishment that has been granted a permit under Title 23, chapter 5, part 6, for the placement of video gambling machines on the premises is exempt from any local government ordinance that is more restrictive than the provisions of Title 50, chapter 40, part 1.

**Section 2.** Section 23-5-612, MCA, is amended to read:

**“23-5-612. Machine permits — fee fees.** (1) The department, upon payment ~~by the operator of the fee fees~~ provided in ~~subsection (2) and (4)~~ subsections (2) and (4) and in conformance with rules adopted under this part, shall issue to the operator an annual permit for an approved video gambling machine.

(2) (a) The department shall charge an annual permit fee of \$200 for each video gambling machine permit. The fee must be prorated on a quarterly basis but may not be prorated to allow a permit to expire before June 30. The department may not grant a refund if the video gambling machine ceases operation before the permit expires.

(b) If the person holding the gambling operator's license for the premises in which the machine is located changes during the first quarter of the permit year and the new operator has received an operator's license and if a machine transfer processing fee of \$25 per machine is paid to the department, the permit remains valid for the remainder of the permit year.

(3) The department shall deposit 50% of the total permit fee collected under subsection (2)(a) and 100% of the machine transfer processing fee collected under subsection (2)(b) in the state special revenue fund for purposes of administering this part and for other purposes provided by law. The balance of the fee collected under subsection (2)(a) must be returned on a quarterly basis to the local government jurisdiction in which the gambling machine is located. The local government portion of the fee is statutorily appropriated to the

department, as provided in 17-7-502, for deposit in the local government treasury.

(4) (a) *In addition to the annual permit fee charged under subsection (2), the department shall charge a \$10 annual permit surcharge fee for each video gambling machine that is on a licensed premises having fewer than 20 machines and a \$20 annual permit surcharge fee for each machine that is on a licensed premises having 20 machines. The annual permit surcharge fee must be prorated as provided in subsection (2)(a).*

(b) *The annual permit surcharge fee charged under subsection (4)(a) must be deposited in the state general fund.*"

**Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 7, chapter 1, part 1, and the provisions of Title 7, chapter 1, part 1, apply to [section 1].

**Section 4. Effective date.** [This act] is effective on passage and approval.

**Section 5. Applicability.** (1) [Section 1] applies retroactively, within the meaning of 1-2-109, to local government ordinances on smoking adopted prior to [the effective date of this act].

(2) [Section 2] applies to annual permit fees charged after June 30, 2003.

Approved April 23, 2003

## CHAPTER NO. 472

[SB 458]

AN ACT PROVIDING PROTECTION FOR RATEPAYERS AND FOR THE SHAREHOLDERS OF INNOCENT THIRD-PARTY PURCHASERS FOR THE ERRORS OR OMISSIONS OF A PREDECESSOR UTILITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

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

**Section 1. Ratepayer and shareholder protection.** (1) Rates established pursuant to Title 69, chapter 3, part 3, may not allow for the recovery of any portion of a civil judgment in a lawsuit arising out of litigation brought by the shareholders of a predecessor in interest against:

- (a) the predecessor in interest;
- (b) the officers or directors of a predecessor in interest;
- (c) the legal advisers or consultants to the predecessor in interest; or
- (d) any successor of the predecessor in interest, including a successor in interest.

(2) (a) Subject to subsection (3), an entity subject to regulation under Title 69, including the entity's subsidiaries and affiliates, may not be made a party to litigation brought by the shareholders of a predecessor in interest against:

- (i) the predecessor in interest;
- (ii) the officers or directors of a predecessor in interest;
- (iii) the legal advisers or consultants to the predecessor in interest; or

(iv) any successor of the predecessor in interest that is not a successor in interest.

(b) Except as provided in subsection (3), an entity subject to regulation under Title 69 may not be held liable for a civil judgment entered against:

(i) a predecessor in interest;

(ii) the officers or directors of a predecessor in interest;

(iii) the legal advisers or consultants to the predecessor in interest; or

(iv) any successor of the predecessor in interest that is not a successor in interest.

(3) Subsection (2) does not apply:

(a) to a successor of a public utility regulated by the public service commission pursuant to Title 69, chapter 3, on May 2, 1997, whose shareholders received stock as a result of the sale of a public utility; or

(b) if the liabilities resulting from, related to, or arising out of a reorganization, restructuring, or plan of merger were explicitly assumed by written contract to be the liabilities of the successor to the predecessor in interest.

(4) For the purposes of this section:

(a) "predecessor in interest" means a public utility regulated by the commission pursuant to Title 69, chapter 3, on May 2, 1997, in which an interest was purchased through an arm's-length transaction in which the market value of the public utility property purchased was paid for in cash, debt assumption, or a combination of cash and debt assumption; and

(b) "successor in interest" means the purchaser of all or a portion of a public utility regulated by the commission pursuant to Title 69, chapter 3, on May 2, 1997, through an arm's-length transaction in which the market value of the public utility property purchased was paid for in cash, debt assumption, or a combination of cash and debt assumption.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 69, chapter 8, part 2, and the provisions of Title 69, chapter 8, part 2, apply to [section 1].

**Section 3. Nonseverability.** It is the intent of the legislature that each part of [section 1] is essentially dependent upon every other part of [section 1], and if one part of [section 1] is held unconstitutional or invalid, all other parts are invalid.

**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 cases filed but in which a judgment has not been entered on [the effective date of this act].

Approved April 23, 2003

## CHAPTER NO. 473

[HB 7]

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS FOR DESIGNATED

PROJECTS UNDER THE RECLAMATION AND DEVELOPMENT GRANTS PROGRAM; PRIORITIZING GRANTS AND AMOUNTS; ESTABLISHING CONDITIONS FOR GRANTS; AMENDING SECTION 2, CHAPTER 419, LAWS OF 1999, AND SECTION 2, CHAPTER 232, LAWS OF 2001; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1. Appropriations for reclamation and development grants.**

(1) The amount of \$2,400,000 is appropriated to the department of natural resources and conservation from the reclamation and development grants special revenue account from funds allocated for appropriation from the interest income of the resource indemnity trust fund as set forth in Title 15, chapter 38.

(2) The funds appropriated in this section must be awarded by the department to the entities listed in [section 2] for the prescribed purposes and in the prescribed grant amounts, subject to the conditions provided in [sections 2 through 4].

**Section 2. Approved grant projects.** (1) The legislature approves the grants listed in subsection (2), to be made in the order of priority as indicated within the following list of projects and activities. If the conditions in [sections 3 and 4] are met, funds must be awarded up to the amounts approved in this section in order of priority until available funds are expended. Funds not accepted by grantees or funds not used by higher-ranked projects and activities must be provided for projects and activities lower on the priority list that would otherwise not receive funding. Descriptions of the various projects and activities and specific conditions established for each project and activity are contained within the department of natural resources and conservation's reclamation and development grants program report to the 58th legislature for the 2005 biennium.

(2) The following are the grants program prioritized projects and activities:

Applicant/Project	Grant Amount
Big Horn Conservation District	
(Ground Water Monitoring—Tongue & Powder River Watersheds)	300,000
Sunburst, Town of	
(Sunburst Water Supply Renovation)	185,249
Governor's Office	
(Growing Carbon)	300,000
Board of Oil and Gas Conservation	
(Oil and Gas Plug and Abandonment)	200,000
Toole County	
(2003 Plugging and Abandonment)	240,000
Board of Oil and Gas Conservation	
(2003 Northern District Plug and Abandonment)	300,000
Board of Oil and Gas Conservation	
(2003 Southern District Plug and Abandonment)	100,000
Department of Environmental Quality	
(Washington Mine and Millsite Reclamation)	300,000

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Powell County*		
	(CMC Roundhouse Site Cleanup)	76,400
Department of Environmental Quality		
	(Drumlummon Tailings, Goldsil Mine Waste Reclamation)	300,000
Sheridan County Conservation District		
	(Reclaiming Oilfield Brine Contaminated Soils)	150,000
Department of Natural Resources and Conservation		
	(Planning Grants)	50,000
Fergus County Conservation District		
	(Central Montana Aquifer Project)	150,000
Judith Basin Conservation District		
	(Judith Basin Aquifer Restoration and Conservation)	70,000

The project grant identified with an asterisk (\*) is contingent on the transfer of the site that is 14.5 acres located south of Milwaukee avenue to Powell County without compensation to the current owner.

(3) To the entities listed in this section, this appropriation constitutes a valid obligation of these funds for purposes of encumbering the funds within the 2005 biennium pursuant to 17-7-302.

**Section 3. Coordination of fund sources for grants program projects.** A sponsor of a grants program project who has applied for a grant for that project under both the reclamation and development grants program and the renewable resource grant and loan program may not receive duplicate funding.

**Section 4. Condition of grants.** Disbursement of grant funds under [sections 1 through 5] is subject to the following conditions that must be met by the project sponsor:

(1) A scope of work and budget for the project must be approved by the department of natural resources and conservation. Reduction in a scope of work or budget may not affect priority activities or improvements.

(2) Other funds required for project completion must have been committed, and the commitment must be documented.

(3) The project sponsor shall show satisfactory completion of conditions described in the recommendation section of the project narrative of the reclamation and development grants program report to the legislature for the 2005 biennium.

(4) An agreement between the department and the project sponsor must be executed in a timely manner, taking into consideration any changed conditions or circumstances that govern the administration and disbursement of funds.

(5) Any other specific requirements considered necessary by the department must be met to accomplish the purpose of the grant as evidenced from the application to the department or as defined by the legislature.

**Section 5. Other appropriations.** There is appropriated to any entity of state government that receives a grant under [sections 1 through 4] the amount of the grant upon award of the grant by the department of natural resources and conservation. Grants to state entities from a prior biennium are reauthorized for completion of contract work.

**Section 6.** Section 2, Chapter 419, Laws of 1999, is amended to read:

**“Section 2. Approved grant projects.** (1) The legislature approves the grants listed in subsection (2), to be made in the order of priority as indicated within the following list of projects and activities. If the conditions in [sections 3 and 4] are met, funds must be awarded up to the amounts approved in this section in order of priority until available funds are expended. Funds not accepted by grantees or funds not used by higher-ranked projects and activities must be provided for projects and activities lower on the priority list that would otherwise not receive funding. Descriptions of the various projects and activities and specific conditions established for each project and activity are contained within the department of natural resources and conservation’s reclamation and development grants program report to the 56th legislature for the 2001 biennium.

(2) The following are the grants program prioritized projects and activities:

Applicant/Project	Grant Amount
MONTANA BOARD OF OIL AND GAS CONSERVATION*	
1999 “A” Orphaned Well Plug and Abandonment and Site Restoration	\$300,000
MONTANA BOARD OF OIL AND GAS CONSERVATION*	
1999 “B” Orphaned Well Plug and Abandonment and Site Restoration	300,000
ENVIRONMENTAL QUALITY, DEPARTMENT OF*	
Toston Smelter Reclamation Project	300,000
ENVIRONMENTAL QUALITY, DEPARTMENT OF*	
Frohner Mine Reclamation Project	300,000
ENVIRONMENTAL QUALITY, DEPARTMENT OF*	
Great Republic Smelter Reclamation Project	300,000
PARK CONSERVATION DISTRICT*	
Upper Yellowstone River Cumulative Effects Investigation	299,940
TOOLE COUNTY*	
Toole County Plugging and Abandonment, Aid to Independent Small Oil Operators	300,000
BUTTE-SILVER BOW LOCAL GOVERNMENT	
Upper Clark Fork Basin: Superfund Technical Assistance	95,236
FERGUS COUNTY CONSERVATION DISTRICT*	
Central Montana Artesian Basin Ground Water Project	150,000
TOOLE COUNTY	
North Toole County Reclamation Project	150,000
BUTTE-SILVER BOW LOCAL GOVERNMENT	
Mining City Mineyard Preservation and Enhancement	297,104
TOWNSEND, CITY OF	
East Pacific Mine Reclamation	202,500



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	MONTANA TECH OF THE UNIVERSITY OF MONTANA	
	Champion International Gravel Pit Reclamation Project	57,494
	LEWISTOWN, CITY OF	
	Source Location of Hazardous Organic Contaminants	
	Spring Creek Drainage	50,000
	GLASGOW IRRIGATION DISTRICT	
	St. Mary Diversion Repairs	110,818
	MONTANA BOARD OF OIL AND GAS CONSERVATION	
	Oil Well Abandonment	20,105

The board of oil and gas conservation is authorized to expend remaining funds from grants to the board in this subsection (2) and remaining funds from grants previously awarded to the board to pay for the proper plugging of additional abandoned oil and gas wells. In determining which wells to plug, abandoned wells that represent the greatest threat to the environment and public health and safety should be given priority over all others.

(3) To the entities listed in this section, this appropriation constitutes a valid obligation of these funds for purposes of encumbering the funds within the 2001 biennium pursuant to 17-7-302.

(4) The funding provided to the grant projects in this section and identified by an asterisk (\*) following the applicant's name is eligible for and may be designated for use as a nonfederal match for the federal funding acquired for the nonpoint source pollution control program administered by the department of environmental quality."

**Section 7.** Section 2, Chapter 232, Laws of 2001, is amended to read:

**"Section 2. Approved grant projects.** (1) The legislature approves the grants listed in subsection (2), to be made in the order of priority as indicated within the following list of projects and activities. If the conditions in [sections 3 and 4] are met, funds must be awarded up to the amounts approved in this section in order of priority until available funds are expended. Funds not accepted by grantees or funds not used by higher-ranked projects and activities must be provided for projects and activities lower on the priority list that would otherwise not receive funding. Descriptions of the various projects and activities and specific conditions established for each project and activity are contained within the department of natural resources and conservation's reclamation and development grants program report to the 57th legislature for the 2003 biennium.

(2) The following are the grants program prioritized projects and activities:

Applicant/Project	Grant Amount
BOARD OF OIL AND GAS CONSERVATION*	\$300,000
2001 Eastern District Orphaned Well Plug & Abandonment & Site Restoration	
BOARD OF OIL AND GAS CONSERVATION*	300,000
2001 Northern District Orphaned Well Plug & Abandonment & Site Restoration	
DEPARTMENT OF ENVIRONMENTAL QUALITY	300,000
Development of Trust Fund to Ensure Long-Term Water Treatment at Zortman-Landusky	

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<del>POWELL COUNTY*</del>		<del>300,000</del>
<del>Ontario Wet Tailings Reclamation</del>		
CITY OF LEWISTOWN*	Reclamation of Brewery Flats on Big Spring Creek	297,740
DEPARTMENT OF ENVIRONMENTAL QUALITY*	CMC Pony Mill Site Reclamation Project (completion phase)	291,191
BROADWATER CONSERVATION DISTRICT*	Big Belt Mine Reclamation Projects	145,380
CITY OF DEER LODGE*	Former Chicago Milwaukee Railroad Passenger Fueling Area, Deer Lodge, Montana	140,000
BUTTE-SILVER BOW COUNTY	Upper Clark Fork Basin; Superfund Technical Assistance	49,272
BOARD OF OIL AND GAS CONSERVATION	2001 Southern District Orphaned Well Plug & Abandonment & Site Restoration	250,000
CUSTER COUNTY CONSERVATION DISTRICT*	Yellowstone River Resource Conservation Project	299,977
CASCADE COUNTY / WEED AND MOSQUITO MANAGEMENT	Fort Shaw Weed Shop Soil Contamination Remediation	218,466
DEPARTMENT OF ENVIRONMENTAL QUALITY*	Organic Soil Amendments	300,000
DEPARTMENT OF ENVIRONMENTAL QUALITY*	Zortman Mine - Ruby Gulch Tailings Removal	300,000
	The state grant is subject to receipt of federal funds to complete tailings removal and stream channel restoration above, within, and below the Zortman townsite.	
DEPARTMENT OF ENVIRONMENTAL QUALITY	Coal Bed Methane Gas EIS	250,000
GLACIER COUNTY*	2000 Glacier County Plugging & Abandonment	150,000
PONDERA COUNTY*	Pondera County Oil & Gas Well Plug & Abandonment Project	100,000
LIBERTY COUNTY*	Abandonment Aid Program for Small Independent Operators in Liberty, Hill, Blaine, & Chouteau Counties	50,000
DEPARTMENT OF ENVIRONMENTAL QUALITY*	Gregory Mine Reclamation Project	300,000
SHERIDAN COUNTY CONSERVATION DISTRICT	Protecting Natural Resources by Reclaiming Oilfield Brine Contaminated Soils	299,950

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	DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION	272,500
	DNRC Environmental Hazard Sites on State Land	
	FLATHEAD COUNTY	167,821
	Assessment of Aggregate Resources for Long-Term Planning in Flathead & Missoula Counties	

(3) To the entities listed in this section, this appropriation constitutes a valid obligation of these funds for purposes of encumbering the funds within the 2003 biennium pursuant to 17-7-302.

(4) The funding provided to the grant projects in this section and identified by an asterisk (\*) following the applicant's name is eligible for and may be designated for use as a nonfederal match for the federal funding acquired for the nonpoint source pollution control program administered by the department of environmental quality."

**Section 8. 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 9. Effective date.** [This act] is effective July 1, 2003.

Approved April 24, 2003

## CHAPTER NO. 474

[HB 159]

AN ACT GENERALLY REVISING FOOD ESTABLISHMENT AND NONPRESCRIPTION DRUG MANUFACTURING LAWS; CREATING A STATUTORY SCHEME FOR THE LICENSURE AND REGULATION OF WHOLESALE FOOD ESTABLISHMENTS AND WHOLESALE AND RETAIL NONPRESCRIPTION DRUG MANUFACTURERS BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; GRANTING RULEMAKING AUTHORITY TO THE DEPARTMENT; PROVIDING FOR INJUNCTIONS, CIVIL ACTIONS, PROSECUTION, AND CIVIL PENALTIES AND CRIMINAL PENALTIES FOR VIOLATIONS OF WHOLESALE FOOD ESTABLISHMENT AND WHOLESALE AND RETAIL NONPRESCRIPTION DRUG MANUFACTURING LAWS; PROVIDING FOR VALIDATION OF LICENSES BY LOCAL HEALTH OFFICERS; PROVIDING FOR THE DENIAL OR CANCELLATION OF LICENSES; PROVIDING FOR INSPECTIONS AND INVESTIGATIONS BY STATE AND LOCAL HEALTH OFFICERS, SANITARIANS-IN-TRAINING, AND REGISTERED SANITARIANS; CREATING A SPECIAL REVENUE ACCOUNT FOR THE DEPARTMENT TO BE USED IN ADMINISTERING WHOLESALE FOOD ESTABLISHMENT AND WHOLESALE AND RETAIL DRUG MANUFACTURING LAWS; REQUIRING THE DEPARTMENT TO PAY LOCAL BOARDS OF HEALTH FOR INSPECTIONS AND ENFORCEMENT; CLARIFYING THE DUTIES OF LOCAL HEALTH OFFICERS; GENERALLY REVISING LAWS GOVERNING FOOD ESTABLISHMENTS TO PROVIDE CONSISTENCY WITH THE WHOLESALE FOOD ESTABLISHMENT AND WHOLESALE AND RETAIL NONPRESCRIPTION DRUG MANUFACTURING LAWS AND TO CLARIFY THE LAWS THAT PERTAIN

TO RETAIL FOOD ESTABLISHMENTS; AMENDING SECTIONS 30-16-301, 50-2-118, 50-50-102, 50-50-106, 50-50-107, 50-50-108, AND 50-50-110, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

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

**Section 1. Purpose.** [Sections 1 through 25] provide for the licensure and regulation of wholesale food establishments and wholesale and retail nonprescription drug manufacturers to prevent and eliminate conditions and practices that endanger public health.

**Section 2. Definitions.** Unless the context clearly requires otherwise, in [sections 1 through 25], the following definitions apply:

- (1) "Consumer" means a person who:
  - (a) is a member of the public;
  - (b) takes possession of food or nonprescription drugs;
  - (c) is not functioning in the capacity of an operator of an establishment; and
  - (d) does not offer the food or nonprescription drugs for resale.
- (2) "Department" means the department of public health and human services provided for in 2-15-2201.
- (3) "Dietary supplement" means a product, other than a tobacco product, that is intended to supplement the diet and:
  - (a) is advertised only as a food supplement; and
  - (b) bears or contains one or more of the following ingredients:
    - (i) a vitamin;
    - (ii) a mineral;
    - (iii) an herb or other botanical substance;
    - (iv) an amino acid; or
    - (v) a dietary substance used to supplement the diet by increasing the total dietary intake or a concentrate, metabolite, constituent, extract, or a combination of any ingredients described in subsections (3)(b)(i) through (3)(b)(iv).
- (4) "Establishment" means a wholesale food manufacturing establishment, wholesale food salvage establishment, wholesale food warehouse, wholesale ice manufacturer, wholesale water bottler, wholesale nonprescription drug manufacturer, or retail nonprescription drug manufacturer.
- (5) (a) "Food" means an edible substance, beverage, or ingredient used, intended for use, or for sale for human consumption. The term includes dietary supplements.
  - (b) The term does not include nonprescription drugs.
- (6) "Local board of health" means a county, city, city-county, or district board of health.
- (7) "Local health officer" means a county, city, city-county, or district health officer appointed by the local board of health or the health officer's authorized representative.
- (8) (a) "Nonprescription drug" means an article, other than food, that is available without a prescription from a health practitioner licensed by the department of labor and industry, and that is:

(i) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of a disease in humans or animals;

(ii) intended to affect the structure or function of the body of humans or animals; or

(iii) intended for use as a component of any article specified in subsections (8)(a)(i) and (8)(a)(ii).

(b) The term does not include devices, as defined in 50-31-103.

(9) "Nonprescription drug manufacturer" means an entity engaged in the manufacturing, processing, preparing, or packaging of nonprescription drugs for sale or human consumption at retail or wholesale.

(10) "Regulatory authority" means the department, the local board of health, the local health officer, or the local sanitarian.

(11) "Retail" means the provision of food or nonprescription drugs directly to the consumer.

(12) "Retail food establishment" means an establishment, as defined in 50-50-102, that provides food directly to the consumer.

(13) (a) "Wholesale" means the sale or provision of food or nonprescription drugs to a retail food establishment or other person engaged in retail sales who sells or provides the items directly to the consumer.

(b) The term does not include the sale or provision of food or nonprescription drugs at retail.

(14) (a) "Wholesale food manufacturing establishment" means a facility and the facility's buildings or structures used to manufacture or prepare food for human consumption at wholesale.

(b) The term does not include:

(i) milk producer's facilities, milk pasteurization facilities, or milk product manufacturing plants;

(ii) slaughterhouses, meat packing plants, or meat depots; or

(iii) producers or harvesters of raw and unprocessed farm products.

(15) "Wholesale food salvage establishment" means an entity that is engaged in reconditioning or by other means salvaging distressed food or that sells, buys, or distributes for human consumption any salvaged food. The term includes a salvage broker, a salvage operator, and a salvage warehouse.

(16) (a) "Wholesale food warehouse" means a facility used to store food or cosmetics for distribution to retailers.

(b) The term includes a frozen food plant that is used to freeze, process, or store food, including any facility used in conjunction with the frozen food plant.

(c) The term does not include a wine, beer, or soft drink warehouse that is separate from facilities where brewing or drink manufacturing occurs.

(17) (a) "Wholesale ice manufacturer" means an entity that produces ice for human consumption that is sold at wholesale in packaged form or in bulk form for food, drink, or culinary purposes.

(b) The term does not include:

(i) persons, hotels, restaurants, inns, caterers, food service contractors, or theaters that manufacture or furnish ice solely for their customers in a manner

that is incidental to the production, sale, or dispensing of other goods and services; or

(ii) a retail food establishment that manufactures ice in packaged form for onsite retail sales to the consumer.

(18) (a) "Wholesale water bottler" means an entity that is engaged in the production, packaging, manufacturing, or processing of drinking water, culinary bottled water, or water otherwise processed and packaged for human consumption that is sold at wholesale.

(b) The term does not include a facility that produces, packages, manufactures, or processes drinking water, culinary bottled water, or water otherwise processed and packaged for human consumption that is done onsite for retail sale.

**Section 3. Department authorized to adopt rules.** (1) The department shall adopt rules relating to the operation of establishments, including rules:

(a) setting standards to ensure sanitation and safety in establishments to protect public health and safety;

(b) relating to the licensing of establishments;

(c) providing procedures for enforcement of the laws and rules relating to establishments;

(d) relating to cooperative agreements between the department and local boards of health; and

(e) setting performance standards for local boards of health, local health officers, and sanitarians to meet as a condition to receipt of funds provided by the department pursuant to [section 25].

(2) To the extent feasible, the rules must be consistent with rules adopted to implement chapter 50.

**Section 4. Cooperative agreements authorized.** The department may enter into cooperative agreements with other state agencies and political subdivisions of the state to carry out the provisions of [sections 1 through 25].

**Section 5. Diseased person not to handle food or nonprescription drugs.** A person who has a communicable disease, as defined in 50-1-101, may not work in any establishment or in the handling or processing of food or nonprescription drugs.

**Section 6. Injunctions.** The regulatory authority may bring an action for an injunction against the continuation of an alleged violation of [sections 1 through 25] or a rule adopted by the department under [sections 1 through 25].

**Section 7. County attorney to prosecute violations.** When the regulatory authority furnishes evidence to the county attorney of a county in this state, the county attorney shall prosecute any person, firm, or corporation violating [sections 1 through 25] or a rule adopted by the department under [sections 1 through 25].

**Section 8. Violation — misdemeanor.** A person who purposefully or knowingly violates provisions of [sections 1 through 25] or rules adopted by the department under [sections 1 through 25] is guilty of a misdemeanor. Upon conviction, the person shall be:

(1) fined an amount of not less than \$50 or more than \$100 for the first offense;

(2) fined an amount of not less than \$75 or more than \$200 for the second offense;

(3) fined an amount of not less than \$200 and imprisoned in the county jail for not more than 90 days for the third offense and subsequent offenses.

**Section 9. Civil penalties — injunctions not barred.** (1) An establishment that violates [sections 1 through 25] or rules adopted by the department under [sections 1 through 25] is subject to a civil penalty not to exceed \$500.

(2) A civil action to impose penalties, as provided under this section, does not bar a prosecution under [sections 7 and 8] or injunctions to enforce compliance with [sections 1 through 25] or to enforce compliance with a rule adopted by the department under [sections 1 through 25].

**Section 10. Costs and expenses — recovery by department or county.** In a civil action initiated by the regulatory authority under [sections 1 through 25], the court may, by petition of the regulatory authority, order an establishment that is found to be in willful violation of [sections 1 through 25] or rules adopted under [sections 1 through 25] to pay the costs of investigations and any other expenses incurred in enforcing the provisions of [sections 1 through 25]. These costs are limited to the direct costs of investigations and other expenses.

**Section 11. License required.** (1) A person operating an establishment shall procure an annual license from the department.

(2) Except as provided in subsection (3), a separate license is required for each establishment, but if more than one type of establishment is operated on the same premises and under the same management, only one license is required.

(3) A person operating an establishment and a retail food establishment is required to obtain a separate license for the establishment under [sections 1 through 25] and for the retail food establishment under Title 50, chapter 50.

**Section 12. Application for license.** An application for a license must be made to the department on forms containing information required by the department, or the application must be made in compliance with the rules established by the board of review established in 30-16-302.

**Section 13. License fee — late renewal fee — allocation of fees.** (1) For each annual license issued, the department shall collect a fee of \$75. For an operation containing an establishment and a retail food establishment, as provided in [section 11(3)], the department shall collect one fee of \$75 for each license.

(2) A person operating an establishment who fails to renew a license by the expiration date provided in [section 15] and who operates the establishment in the license year for which an annual renewal fee was not paid shall, upon renewal, pay to the department a late renewal fee of \$25 in addition to the annual renewal fee required by subsection (1). Payment of the late renewal fee does not relieve the operator of responsibility for operating without a license.

(3) The department shall deposit the annual fees collected under subsection (1) as follows:

(a) 88% into the state special revenue fund to the credit of the local board inspection fund account, created in 50-2-108;

(b) 6% into the general fund; and

(c) 6% into the account, created in [section 22], in the state special revenue fund.

(4) The department shall deposit all of the fees collected under subsection (2) into the account, created by [section 22], in the state special revenue fund.

**Section 14. License fee — late renewal fee — allocation of fees.** (1) For each annual license issued, the department shall collect a fee of \$90. For an operation containing an establishment and a retail food establishment, as provided in [section 11(3)], the department shall collect one fee of \$90 for each license.

(2) A person operating an establishment who fails to renew a license by the expiration date provided in [section 15] and who operates the establishment in the license year for which an annual renewal fee was not paid shall, upon renewal, pay to the department a late renewal fee of \$25 in addition to the annual renewal fee required by subsection (1). Payment of the late renewal fee does not relieve the operator of responsibility for operating without a license.

(3) The department shall deposit the annual fees collected under subsection (1) as follows:

(a) 90% into the state special revenue fund to the credit of the local board inspection fund account, created in 50-2-108;

(b) 5% into the general fund; and

(c) 5% into the account, created in [section 22], in the state special revenue fund.

(4) The department shall deposit all of the fees collected under subsection (2) into the account, created by [section 22], in the state special revenue fund.

**Section 15. License expiration — non-transferability.** (1) Except as provided in subsection (2), licenses expire on December 31 of the year in which they are issued unless canceled for cause.

(2) If the board of review adopts a renewal date for licenses under [sections 1 through 25], the licenses expire on the anniversary date established by rule by the board of review.

(3) Licenses are not transferable.

**Section 16. Right to renewal.** (1) License renewal may be obtained annually by paying the required annual license fee provided for in [section 13].

(2) The department shall renew licenses as a matter of right, unless conditions exist that are grounds for cancellation or denial of a license.

**Section 17. Validation by local health officer.** (1) A license issued by the department is not valid until it is signed by the local health officer of the local board of health with jurisdiction where the establishment is located.

(2) The local health officer shall validate or refuse to validate the license within 15 days of the receipt of the license.

(3) The failure of the local health officer to validate the license within 15 days after its receipt is a refusal.

**Section 18. Refusal of local health officer to validate — appeal to board.** (1) A local health officer may refuse to validate a license issued by the department only if the local health officer determines that the applicant has not met the requirements for the issuance of the license under [sections 1 through



25] or rules adopted by the department under [sections 1 through 25]. The local health officer shall notify the applicant and the department of the refusal within 5 days of the decision not to validate. The notice must state the grounds for the refusal.

(2) The applicant may appeal the decision of the local health officer to the local board of health by filing a written notice of appeal with the local health officer and the local board of health within 30 days of the local health officer's refusal to validate a license or within 30 days of the expiration of the period for the local health officer's decision under [section 17], whichever is first.

(3) Upon the filing of the notice of appeal, the applicant is entitled to a hearing before the local board of health to determine the applicant's eligibility for a license under [sections 1 through 25] and department rules adopted under [sections 1 through 25]. The hearing must be held pursuant to the contested case procedure of the Montana Administrative Procedure Act. If the local board of health finds that the applicant is entitled to a validated license, the presiding officer of the local board of health shall validate the license by signing the license.

**Section 19. Cancellation of license — multiple establishments.** (1) The department may deny or cancel a license if it finds, after proper investigation, that the applicant or licensee has violated or is not in compliance with [sections 1 through 25] or a rule adopted under [sections 1 through 25] and that the applicant or licensee has failed or refused to remedy or correct the noncompliance or violation.

(2) When more than one type of establishment is authorized by one license, as provided in [section 11(2)], the denial or cancellation may affect one, some, or all of the types of establishments as determined by the department.

**Section 20. Submission and execution of plan of correction as bar to cancellation.** An applicant or licensee may submit to the department a written plan of correction within 10 days after receipt from the department of a written notice of violation. The department shall determine if the plan of correction is acceptable. The submission and execution of an acceptable plan of correction within the time prescribed in the plan are a bar to license cancellation.

**Section 21. Notice and hearing required.** (1) A license may not be denied or canceled by the department without delivery to the applicant or licensee of a written statement of the grounds for denial or cancellation and an opportunity for a hearing before the department to show cause, if any, why the license should not be denied or canceled.

(2) The applicant or licensee shall make a written request to the department for a hearing within 10 days after notice of the grounds for denial or cancellation has been received.

(3) The hearing must be held in accordance with the contested case procedure of the Montana Administrative Procedure Act. After a hearing, the department may issue an appropriate order. Service of notice or an order mailed by the department is complete upon mailing.

**Section 22. Special revenue account.** There is an account in the state special revenue fund. Money in the account is allocated to the department to be used to administer the provisions of [sections 1 through 25] and the rules adopted under [sections 1 through 25].

**Section 23. Health officers and sanitarians to make investigations and inspections.** State and local health officers, sanitarians-in-training, and

registered sanitarians shall conduct investigations and inspections of establishments and make reports to the department as required under rules adopted by the department.

**Section 24. Health officers and sanitarians to have free access.** State and local health officers, sanitarians-in-training, and registered sanitarians must be provided free access to establishments at all reasonable hours for the purpose of conducting investigations and inspections as required under [sections 1 through 25].

**Section 25. Department to pay local health board for inspections and enforcement.** (1) Before June 30 of each year, the department shall pay to a local board of health an amount from the local board inspection fund account, created in 50-2-108, that may be used only for the purpose of inspecting establishments under [sections 1 through 25] and enforcing the provisions of [sections 1 through 25]. However, a payment may be made only if:

- (a) there is a functioning local board of health; and
- (b) the local board of health, local health officers, sanitarians-in-training, and registered sanitarians:
  - (i) assist in inspections and enforcement of the provisions of [sections 1 through 25] and rules adopted under [sections 1 through 25]; and
  - (ii) meet minimum program performance standards as established under rules adopted by the department.

(2) The funds received by the local board of health pursuant to subsection (1) must be deposited with the appropriate local fiscal authority and must be used to supplement, but not supplant, other funds received by the local board of health that in the absence of funding received under subsection (1) would be made available for the same purpose.

(3) Funds in the local board inspection fund account not paid to the local board of health, as provided in subsection (1), may be used by the department, within any jurisdiction that does not qualify to receive payments from the local board inspection fund account, to enforce the provisions of [sections 1 through 25] and rules adopted under [section 1 through 25].

**Section 26.** Section 30-16-301, MCA, is amended to read:

**“30-16-301. Business registration and licensing plan — administration.** (1) The provisions of 16-11-120, 16-11-122, 30-12-203, 30-13-203, 30-13-206, 30-13-210, 30-13-217, 30-16-104, 50-50-201, 50-50-203, 50-50-205, 50-50-207, 50-50-214, [sections 11 through 15], [section 17], 80-7-106, 81-9-201, 81-20-201, and 82-15-105 constitute a means of implementing a preliminary plan for streamlined registration and licensing procedures. Sections 16-11-120, 16-11-122, 30-12-203, 30-13-203, 30-13-206, 30-13-210, 30-13-217, 30-16-104, 50-50-201, 50-50-203, 50-50-205, 50-50-207, 50-50-214, [sections 11 through 15], [section 17], 80-7-106, 81-9-201, 81-20-201, and 82-15-105 provide that certain licenses selected by the board of review must allow for:

- (a) an anniversary date for license renewal that is set by the board of review;
- (b) an electronic means of verifying the information required in the license application; and
- (c) credit card discounts in relation to fees required for licensure.

(2) The department shall designate an employee in charge of administering the plan whose duties include those of executive secretary of the board of review."

**Section 27.** Section 50-2-118, MCA, is amended to read:

**"50-2-118. Powers and duties of local health officers.** (1) Local health officers or their authorized representatives shall:

- (a) make inspections for sanitary conditions;
- (b) as directed by the local board, issue written orders for the destruction and removal of filth ~~which~~ *that* might cause disease;
- (c) with written approval of the department, order buildings or facilities where people congregate closed during epidemics;
- (d) on forms provided by the department, report communicable diseases to the department each week;
- (e) before the first day of January, April, July, and October, give a report to the local board of sanitary conditions in the county, city, city-county, or district, together with a detailed account of ~~his~~ activities, on forms and containing information required by the department;
- (f) before the 10th day after the report is given to the local board, send a copy of the report required by subsection (1)(e) ~~of this section~~ to the department;
- (g) as prescribed by rules adopted by the department, establish and maintain quarantines;
- (h) as prescribed by rules adopted by the department, supervise the disinfection of places at the expense of the local board when a period of quarantine ends;
- (i) notify the department of ~~his~~ appointment and changes in membership of the local board;
- (j) file a complaint with the appropriate court if this chapter or rules adopted by the local board or state department under this chapter are violated;
- (k) validate state licenses issued by the department in accordance with chapters 50 through 53 of this title *and [sections 1 through 25].*

(2) With approval of the department, local health officers may forbid persons to assemble in a place if the assembly endangers public health.

(3) A local health officer who is a physician may be placed in charge of a communicable disease hospital, but a local health officer who is a physician is not required to act as a physician to the indigent.

(4) A local health officer who is not a physician ~~shall~~ *may* not act as a physician to anyone."

**Section 28.** Section 50-50-102, MCA, is amended to read:

**"50-50-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Baked goods" means breads, cakes, candies, cookies, pastries, and pies that are not potentially hazardous foods.

~~(2) (a) "Commercial establishment" means an establishment operated primarily for profit.~~

~~(b) The term does not include a farmer's market.~~

(2) "Consumer" means a person who is a member of the public, takes possession of food, is not operating an establishment, and does not offer the food for resale.

(3) "Department" means the department of public health and human services provided for in 2-15-2201.

(4) "Establishment" means a retail food manufacturing establishment, meat market, food service establishment, ~~food warehouse, frozen food plant, commercial food processor,~~ perishable food dealer, or water hauler not regulated as a public water supply system as provided in Title 75, chapter 6.

(5) "Farmer's market" means a farm premises, a roadside stand owned and operated by a farmer, or an organized market authorized by the appropriate municipal or county authority.

(6) "Food" means an edible substance, beverage, or ingredient used, intended for use, or for sale for human consumption.

~~(7) "Food manufacturing establishment" means a commercial establishment and buildings or structures in connection with it used to manufacture or prepare food for sale or human consumption, but does not include milk producers' facilities, milk pasteurization facilities, milk product manufacturing plants, slaughterhouses, or meat packing plants.~~

~~(8)~~(7) (a) "Food service establishment" means a fixed or mobile restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grille, tearoom, sandwich shop, soda fountain, food store serving food or beverage samples, food or drink vending machine, tavern, bar, cocktail lounge, nightclub, industrial feeding establishment, catering kitchen, commissary, private organization routinely serving the public, or similar place where food or drink is prepared, served, or provided to the public *at retail*, with or without charge.

(b) The term does not include:

(i) ~~establishments~~ operations, vendors, or vending machines that sell or serve only packaged, nonperishable foods in their unbroken, original containers; ~~or~~

(ii) a private organization serving food only to its members;

(iii) custom meat cutters or wild game processors who cut, process, grind, package, or freeze game meat for the owner of the carcass for consumption by the owner or the owner's family, pets, or nonpaying guests; or

~~(c)~~(iv) The term does not include an establishment, as defined in 50-51-102, that serves food only to its registered guests.

~~(9) (a) "Food warehouse" means a commercial establishment and buildings or structures in connection with it used to store food, drugs, or cosmetics for distribution to retail outlets.~~

~~(b) The term does not include a wine, beer, or soft drink warehouse that is separate from facilities where brewing occurs.~~

~~(10) "Frozen food plant" means a place used to freeze, process, or store food, including facilities used in conjunction with the frozen food plant, and a place where individual compartments are offered to the public on a rental or other basis.~~

(8) "Local board of health" means a county, city, city-county, or district board of health.

(9) "Local health officer" means a county, city, city-county, or district health officer, appointed by the local board of health, or the health officer's authorized representative.

~~(11)~~ (10) "Meat market" means ~~a commercial establishment~~ an operation and buildings or structures in connection with it used to process, store, or display meat or meat products for retail sale to the public or for human consumption.

~~(12)~~ (11) "Nonprofit organization" means any organization qualifying as a tax-exempt organization under 26 U.S.C. 501.

~~(13)~~ (12) "Perishable food dealer" means ~~a person or commercial establishment~~ an operation that is in the business of purchasing and selling perishable food to the public at retail.

~~(14)~~ (13) "Person" means a person, partnership, corporation, association, cooperative group, or other entity ~~engaged in operating, owning, or offering services of an establishment.~~

~~(15)~~ (14) (a) "Potentially hazardous food" means a food that is natural or synthetic and is in a form capable of supporting:

(i) the rapid and progressive growth of infectious or toxigenic microorganisms; or

(ii) the growth and toxin production of *Clostridium botulinum*.

(b) The term includes cut melons, garlic and oil mixtures, a food of animal origin that is raw or heat-treated, and a food of plant origin that is heat-treated or consists of raw seed sprouts.

(c) The term does not include:

(i) an air-cooled, hard-boiled egg with intact shell;

(ii) a food with a hydrogen ion concentration (pH) level of 4.6 or below when measured at 24 degrees C (75 degrees F);

(iii) a food with a water activity (aw) value of 0.85 or less;

(iv) a food in an unopened hermetically sealed container that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution; or

(v) a food for which laboratory evidence is accepted by the department as demonstrating that rapid and progressive growth of infectious and toxigenic microorganisms or the slower growth of *Clostridium botulinum* cannot occur.

~~(16)~~ (15) (a) "Preserves" means processed fruit or berry jams, jellies, compotes, fruit butters, marmalades, chutneys, fruit aspics, fruit syrups, or similar products that have a hydrogen ion concentration (pH) of 4.6 or below when measured at 24 degrees C (75 degrees F) and that are aseptically processed, packaged, and sealed.

(b) The term does not include:

(i) tomatoes or food products containing tomatoes; or

(ii) any other food substrate or product preserved by any method other than that described in subsection ~~(16)(a)~~ (15)(a).

~~(17)~~ (16) "Raw and unprocessed farm products" means fruits, vegetables, and grains sold at a farmer's market in their natural state that are not packaged and labeled and are not:

(a) cooked;

- (b) canned;
- (c) preserved, except for drying;
- (d) combined with other food products; or
- (e) peeled, diced, cut, blanched, or otherwise subjected to value-adding procedures.

(17) "Regulatory authority" means the department, the local board of health, the local health officer, or the local sanitarian.

(18) "Retail" means the provision of food directly to the consumer.

(19) (a) "Retail food manufacturing establishment" means an operation and the buildings or structures used to manufacture or prepare food for sale or human consumption at retail.

(b) The term does not include:

(i) milk producers' facilities, milk pasteurization facilities, or milk product manufacturing plants;

(ii) slaughterhouses, meat packing plants, or meat depots; or

(iii) producers or harvesters of raw and unprocessed farm products.

~~(18)~~ (20) (a) "Water hauler" means a person engaged in the business of transporting water for human consumption and use and that is not regulated as a public water supply system as provided in Title 75, chapter 6.

(b) The term does not include a person engaged in the business of transporting water for human consumption that is used for individual family households and family farms and ranches."

**Section 29.** Section 50-50-106, MCA, is amended to read:

**"50-50-106. Injunctions.** ~~Notwithstanding any other provision of this chapter, the department, local, county, or district health officer or sanitarian~~ The regulatory authority may bring an injunction against the ~~continuation of an alleged~~ any continued violation of this chapter or rule adopted by the department under this chapter."

**Section 30.** Section 50-50-107, MCA, is amended to read:

**"50-50-107. County attorney to prosecute violations.** When the ~~department~~ regulatory authority furnishes evidence to the county attorney of a county in this state, the county attorney shall prosecute any person, firm, or corporation violating this chapter or a rule effective under this chapter."

**Section 31.** Section 50-50-108, MCA, is amended to read:

**"50-50-108. Violation of chapter a — misdemeanor.** A person who purposefully or knowingly violates provisions of this chapter or rules adopted by the department under this chapter is guilty of a misdemeanor. Upon conviction, ~~he~~ the person shall be:

- (1) fined not less than \$50 or more than \$100 for the first offense;
- (2) fined not less than \$75 or more than \$200 for the second offense;
- (3) fined not less than \$200 and imprisoned in the county jail for not more than 90 days for the third offense and subsequent offenses."

**Section 32.** Section 50-50-110, MCA, is amended to read:

**"50-50-110. Costs and expenses — recovery by department or county.** In a civil action initiated by the ~~department or county~~ regulatory

*authority* under this chapter, the court may, by petition of the ~~department or county~~ *regulatory authority*, order an establishment that is found in violation of this chapter or rules adopted under this chapter to pay the costs of investigations and any other expenses incurred in enforcing the provisions of this chapter in the case of a willful violation. These costs are limited to the direct costs of investigations and other expenses.”

**Section 33. Codification instruction.** [Sections 1 through 25] are intended to be codified as an integral part of Title 50, and the provisions of Title 50 apply to [sections 1 through 25].

**Section 34. Coordination instruction.** If Senate Bill No. 464 is not passed and approved, then [sections 14, 35(2), and 36 of this act] are void and [section 13 of this act] must read as follows:

“**NEW SECTION. Section 13. License fee — late renewal fee — allocation of fees.** (1) For each annual license issued, the department shall collect a fee of \$60. For an operation containing an establishment and a retail food establishment, as provided in [section 11(3)], the department shall collect one fee of \$60 for each license.

(2) A person operating an establishment who fails to renew a license by the expiration date provided in [section 14] and who operates the establishment in the license year for which an annual renewal fee was not paid shall, upon renewal, pay to the department a late renewal fee of \$25 in addition to the annual renewal fee required by subsection (1). Payment of the late renewal fee does not relieve the operator of responsibility for operating without a license.

(3) The department shall deposit the annual fees collected under subsection (1) as follows:

(a) 85% into the state special revenue fund to the credit of the local board inspection fund account, created in 50-2-108;

(b) 7.5% into the general fund; and

(c) 7.5% into the account, created in [section 21], in the state special revenue fund.

(4) The department shall deposit all of the fees collected under subsection (2) into the account, created by [section 21], in the state special revenue fund.”

**Section 35. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective January 1, 2004.

(2) [Section 14] is effective January 1, 2005.

**Section 36. Termination.** [Section 13] terminates December 31, 2004.

Approved April 24, 2003

## CHAPTER NO. 475

[HB 190]

AN ACT GENERALLY REVISING ELECTION LAWS; CLARIFYING THE TIMES FOR HOLDING SPECIAL ELECTIONS; IMPLEMENTING THE PROVISIONS OF THE HELP AMERICA VOTE ACT CONCERNING A STATEWIDE VOTER REGISTRATION LIST, INFORMATION SHARING, AND PROVISIONAL VOTING; PROVIDING THAT ALL ELECTORS MUST PRESENT IDENTIFICATION BEFORE VOTING; PROVIDING THAT A

CANDIDATE MAY NOT FILE FOR MORE THAN ONE OFFICE; REQUIRING THAT A DECLARATION OF INTENT FILED BY A WRITE-IN CANDIDATE IS NOT VALID UNTIL THE FILING FEE IS PAID; REVISING PROVISIONS REGARDING VOTER INSTRUCTIONS THAT MUST BE DISPLAYED; REVISING WHEN ABSENTEE BALLOTS MUST BE AVAILABLE; REQUIRING THAT AN APPLICATION FOR AN ABSENTEE BALLOT INCLUDE THE ELECTOR'S BIRTH DATE; CLARIFYING HOW ABSENTEE BALLOT APPLICATIONS MUST BE PROVIDED TO THE ELECTION ADMINISTRATOR; PROVIDING THAT VOTING INSTRUCTIONS BE ENCLOSED WITH ABSENTEE BALLOT MAILINGS IRRESPECTIVE OF WHETHER THE ELECTOR IS OUT OF THE STATE; PROVIDING THAT STATE EMPLOYEE TIME MAY BE SPENT ON THE YOUTH VOTING PROGRAM; REVISING THE TIME WITHIN WHICH A CANVASSING BOARD IS REQUIRED TO MEET TO CANVASS THE RETURNS; PROVIDING THAT THE VOTER INFORMATION PAMPHLET MAY BE ADDRESSED TO THE CURRENT RESIDENT AT AN ADDRESS; REVISING THE TIME BY WHICH THE VOTER INFORMATION PAMPHLET MUST BE MAILED; ELIMINATING CERTAIN CHALLENGES TO AN ELECTOR'S ELIGIBILITY TO VOTE; AMENDING SECTIONS 13-1-101, 13-1-104, 13-1-301, 13-2-115, 13-2-116, 13-2-122, 13-2-123, 13-2-205, 13-2-220, 13-2-402, 13-2-513, 13-2-514, 13-2-601, 13-10-201, 13-10-211, 13-13-112, 13-13-114, 13-13-201, 13-13-204, 13-13-205, 13-13-212, 13-13-213, 13-13-214, 13-13-232, 13-13-241, 13-13-301, 13-14-112, 13-14-113, 13-15-111, 13-15-401, 13-15-402, 13-19-313, 13-22-107, 13-27-410, AND 13-37-250, MCA; REPEALING SECTIONS 13-2-114, 13-2-202, 13-2-203, 13-2-219, 13-2-403, 13-2-404, 13-2-515, 13-2-603, 13-13-304, 13-13-305, 13-13-306, 13-13-307, 13-13-309, 13-13-310, AND 13-13-311, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

*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 ~~a qualified~~ *an elector who voted in the previous federal general election and whose name is on the active list.*

(2) "Active list" means a list of active electors maintained ~~by an election administrator~~ pursuant to ~~13-2-219~~ *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 completed~~ *voter registration card form prescribed by the secretary of state that is completed and signed by an elector, submitted to the election administrator, and contains voter registration information subject to confirmation, verification as provided in* ~~13-2-207~~ *by law.*

(5) "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; and
- (c) an officeholder who is the subject of a recall election.

(6) (a) "Contribution" means:

(i) an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to influence an election;

(ii) a transfer of funds between political committees;

(iii) 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:

(i) 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 ~~residence~~ residences for a candidate or other individual;

(ii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation;

(iii) the cost of any communication by any membership organization or corporation to its members or stockholders or employees; or

(iv) filing fees paid by the candidate.

(7) "Election" means a general, regular, special, or primary election held pursuant to the requirements of state law, regardless of the time or purpose.

(8) "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, the term means the school district clerk.

(9) "Elector" means an individual qualified ~~and registered~~ to vote under state law.

(10) (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value made for the purpose of influencing the results of an election.

(b) "Expenditure" does not mean:

(i) services, food, or lodging provided in a manner that they are not contributions under subsection (6);

(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, 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.

(11) "Federal election" means a general or primary election in which an elector may vote for individuals for the office of president of the United States or for the United States congress.

(12) "General election" or "regular election" means an election held for the election of public officers throughout the state at times specified by law, including elections for officers of political subdivisions when the time of the election is set on the same date for all similar political subdivisions in the state. For ballot issues required by Article III, section 6, or Article XIV, section 8, of the Montana constitution to be submitted by the legislature to the electors at a general election, "general election" means an election held at the time provided in 13-1-104(1). For ballot issues required by Article XIV, section 9, of the Montana constitution to be submitted as a constitutional initiative at a regular election, regular election means an election held at the time provided in 13-1-104(1).

(13) "Inactive elector" means an individual *who failed to vote in the preceding federal general election and whose name is placed on an inactive list pursuant to 13-2-220.*

(14) "Inactive list" means a list of inactive electors maintained ~~by an election administrator pursuant to 13-2-219~~ 13-2-220.

(15) "Individual" means a human being.

(16) "Issue" or "ballot issue" means a proposal submitted to the people at an election for their approval or rejection, including but not limited to initiatives, referenda, proposed constitutional amendments, recall questions, school levy questions, bond issue questions, or a ballot question. 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 upon the ballot has been completed, except that a statewide issue becomes a "ballot issue" upon approval by the secretary of state of the form of the petition or referral.

(17) "*Legally registered elector*" means an individual whose application for voter registration was accepted, processed, and verified as provided by law.

~~(17)~~(18) "Person" means an individual, corporation, association, firm, partnership, cooperative, committee, club, union, or other organization or group of individuals or a candidate as defined in subsection (5).

~~(18)~~(19) "Political committee" means a combination of two or more individuals or a person other than an individual who makes a contribution or expenditure:

(a) to support or oppose a candidate or a committee organized to support or oppose a candidate or a petition for nomination; or

(b) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or

(c) as an earmarked contribution.

~~(19)~~(20) "Political subdivision" means a county, consolidated municipal-county government, municipality, special district, or any other unit of government, except school districts, having authority to hold an election for officers or on a ballot issue.

~~(20)~~ (21) "Primary" or "primary election" means an election held throughout the state to nominate candidates for public office at times specified by law, including nominations of candidates for offices of political subdivisions when the time for nominations is set on the same date for all similar subdivisions in the state.

(22) "Provisional ballot" means a ballot cast by an elector whose identity and eligibility to vote have not been verified as provided by law.

(23) "Provisionally registered elector" means an individual whose application for voter registration was accepted but whose eligibility has not yet been verified as provided by law.

~~(21)~~ (24) "Public office" means a state, county, municipal, school, or other district office that is filled by the people at an election.

~~(22)~~ (25) "Registrar" means the county election administrator and any regularly appointed deputy or assistant election administrator.

~~(23)~~ (26) "Special election" means an election other than a statutorily scheduled primary or general election held at any time for any purpose provided by law. It may be held in conjunction with a statutorily scheduled election.

(27) "Statewide voter registration list" means the voter registration list established and maintained pursuant to [sections 4 and 5].

(28) "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.

~~(24)~~ (29) "Voting machine or device" means any equipment used to record, tabulate, or in any manner process the vote of an elector."

**Section 2.** Section 13-1-104, MCA, is amended to read:

**"13-1-104. Times for holding general elections.** (1) (a) ~~Except as provided in subsection (1)(b), a general election must be held throughout the state in every even-numbered year on the first Tuesday after the first Monday of November to vote on ballot issues required by Article III, section 6, or Article XIV, section 8, of the Montana constitution to be submitted by the legislature to the electors at a general election, unless an earlier date is provided in a law authorizing a special election on an initiative or referendum pursuant to Article III, section 6,~~ and to elect federal officers, state or multicounty district officers, members of the legislature, judges of the district court, and county officers when the terms of the offices will expire before the next scheduled election for the offices or when one of the offices must be filled for an unexpired term as provided by law.

(b) *A special election may be held on an earlier date provided in a law authorizing a special statewide election on an initiative or referendum pursuant to Article III, section 6, of the Montana constitution.*

(2) A general election must be held throughout the state in every odd-numbered year on the first Tuesday after the first Monday in November to elect municipal officers, officers of political subdivisions wholly within one county and not required to hold annual elections, and any other officers specified by law for election in odd-numbered years when the term for the offices will expire before the next scheduled election for the offices or when one of the offices must be filled for an unexpired term as provided by law.

(3) The general election for any political subdivision, other than a municipality, required to hold elections annually ~~shall~~ *must* be held on school election day, the first Tuesday after the first Monday of May of each year, and is subject to the election procedures provided for in 13-1-401.

(4) The general election for a municipality required to hold elections annually may be held either on school election day, as provided in subsection (3), or on the first Tuesday after the first Monday in November, at the discretion of the governing body.”

**Section 3.** Section 13-1-301, MCA, is amended to read:

**“13-1-301. Election administrator.** (1) The county clerk and recorder of each county is the election administrator unless the governing body of the county designates another official or appoints an election administrator.

(2) The election administrator is responsible for the administration of all procedures relating to registration of electors and conduct of elections, ~~and~~ shall keep all *county* records relating to elector registration and elections, *and is the primary point of contact for the county with respect to the statewide voter registration list and implementation of other provisions of applicable federal law governing elections.*

(3) The election administrator may appoint a deputy election administrator for each political subdivision required to hold annual elections under the provisions of 13-1-104(3). Each election administrator or deputy election administrator is responsible for the conduct of the annual elections of ~~such~~ *the* political subdivision, as provided by 13-1-401.”

**Section 4. Statewide voter registration database — information-sharing agreements.** (1) The secretary of state shall establish, in a uniform and nondiscriminatory manner, a single official, centralized, and interactive computerized statewide voter registration database that meets the requirements of 42 U.S.C. 15483.

(2) (a) The statewide voter registration database must be used as the official list of registered electors for the conduct of all elections subject to this title.

(b) The database must contain the name and registration information of each registered elector.

(c) Each election administrator must be provided with immediate electronic access to the database.

(d) The secretary of state shall provide the technical support required to assist election administrators to enter, maintain, and access information in the statewide voter registration database.

(3) As provided in 42 U.S.C. 15483:

(a) the secretary of state and the attorney general shall enter into an agreement to match information in the statewide voter registration list with information in the motor vehicle licensing database to the extent required to verify voter registration information; and

(b) the attorney general shall enter into an agreement with the United States commissioner of social security for the purpose of verifying voter registration information.

**Section 5. Rulemaking for statewide voter registration list.** (1) The secretary of state shall adopt rules to implement the provisions of 42 U.S.C. 15483 and this chapter.

(2) The rules must include but are not limited to:

(a) a list of maintenance procedures, including new data entry, updates, registration transfers, and other procedures for keeping information current and accurate;

(b) proper maintenance and use of active and inactive lists;

(c) proper maintenance and use of lists for legally registered electors and provisionally registered electors;

(d) procedures and timelines to be used by election administrators when providing the information required in 13-2-123;

(e) technical security of the statewide voter registration database;

(f) information security with respect to keeping from general public distribution driver's license numbers, whole or partial social security numbers, and address information protected from general disclosure pursuant to 13-2-115; and

(g) quality control measures for the system and system users.

**Section 6. Rulemaking on sufficiency and verification of voter registration information.** (1) The secretary of state shall adopt rules:

(a) to implement the provisions of [section 7] and this section concerning how election administrators determine whether the information provided by an elector on an application for voter registration is:

(i) sufficient to be accepted and processed; or

(ii) insufficient to be accepted and processed;

(b) establishing procedures for verifying the accuracy of voter registration information;

(c) establishing standards for determining whether an elector may be legally registered or provisionally registered and the effect of that registration on identification requirements; and

(d) establishing procedures for notifying electors about the status of their applications and registration.

(2) The rules may not conflict with 42 U.S.C. 15301, et seq., or 13-2-208.

**Section 7. Application for voter registration — sufficiency and verification of information — identifiers assigned for voting purposes.**

(1) An individual may apply for voter registration in person or by mail by completing and signing an application for voter registration and providing the application to the election administrator in the county in which the elector resides before the close of registration as provided in 13-2-301.

(2) An individual applying by mail shall send the application to the election administrator, postage paid, no later than 15 days after the date it is signed. An application for voter registration properly executed and postmarked on or before the day registration is closed must be accepted for 3 days after the close of registration.

(3) Each application for voter registration must be accepted and processed as provided in rules adopted under [section 6].

(4) Except as provided in subsection (5):

(a) an applicant for voter registration shall provide the applicant's driver's license number; or

(b) if the applicant does not have a driver's license, the applicant shall provide the last four digits of the applicant's social security number.

(5) If an applicant does not have a driver's license or social security number:

(a) an applicant appearing in person before the election administrator shall provide:

(i) current and valid photo identification, including but not limited to a valid driver's license, a school district or postsecondary education photo identification, or a tribal photo identification, with the individual's name; or

(ii) a current utility bill, bank statement, paycheck, government check, or other government document that shows the individual's name and current address.

(b) an applicant applying to register by mail shall also enclose a copy of:

(i) a current and valid photo identification, including but not limited to a valid driver's license, a school district or postsecondary education photo identification, or a tribal photo identification, with the individual's name; or

(ii) a current utility bill, bank statement, paycheck, government check, or other government document that shows the individual's name and current address.

(6) (a) If information provided on an application for voter registration is sufficient to be accepted and processed and is verified pursuant to rules adopted under [section 6], the election administrator shall register the elector as a legally registered elector.

(b) If information provided on an application for voter registration was sufficient to be accepted but the applicant failed to provide the information required in subsection (4) or (5) or if the information provided was incorrect or insufficient to verify the individual's eligibility to vote, the election administrator shall register the applicant as a provisionally registered elector.

(7) Each applicant for voter registration must be notified of the elector's registration status pursuant to rules adopted under [section 6].

(8) The secretary of state shall assign to each elector whose application was accepted a unique identification number for voting purposes and shall establish a statewide uniform method to allow the secretary of state and local election officials to distinguish legally registered electors from provisionally registered electors.

(9) The provisions of this section may not be interpreted to conflict with voter registration accomplished under 13-2-212, 13-2-215, 13-2-221, and 61-5-107 and as provided for in federal law.

**Section 8.** Section 13-2-115, MCA, is amended to read:

**"13-2-115. Registration Certification of statewide voter registration list — locallists to be prepared.** (1) ~~Except as provided in subsections (6) and (7), immediately~~ Immediately after registration is closed, the secretary of state shall certify the official statewide voter registration list.

(2) Each election administrator shall ~~prepare and~~ have printed from the certified statewide voter registration database lists of all registered electors in each precinct in the county. ~~Names~~ Except as provided in subsections (5) and (6), names of electors must be listed alphabetically, with their residence address or with a mailing address if located where street numbers are not used. ~~A preliminary list of registered electors may be printed before the close of~~

~~registration for an election. If a preliminary list is printed, a supplementary list must be printed after the close of registration.~~

~~(2)(3)~~ A copy of the list of registered ~~voters~~ *electors in a precinct* must be displayed at the *precinct's* polling place. Extra copies of the lists must be retained by the election administrator and furnished to an elector upon request.

~~(3)~~ The list of registered electors prepared for a primary election may be used for the general election if a supplemental list giving the additions and deletions since the primary list was prepared is printed. The election administrator may prepare lists for a special election, but lists are not required to be printed for special elections.

(4) Lists of registered ~~voters~~ *electors* need not be printed if the election will not be held.

~~(5)~~ The election administrator shall forward a list of all registered electors in the county to the secretary of state, as provided in 13-2-123. The secretary of state shall use the lists submitted by election administrators to compile and maintain a list of all registered electors in the state. Upon written request, the secretary of state shall furnish to any elector, for noncommercial use, a current list of registered electors. Upon delivery of the list to the elector, the secretary of state shall charge and collect a fee, which must be set and deposited in accordance with 2-15-405.

~~(6)(5)~~ If a law enforcement officer or reserve officer, as defined in 7-32-201, requests in writing that, for security reasons, the officer's and the officer's spouse's residential address, if the same as the officer's, not be disclosed, the ~~registrar~~ *secretary of state or an election administrator* may not include the address on any *generally available* list of registered ~~voters~~ *electors* but may list only the ~~name or~~ *electors' names*.

~~(7)(6)~~ (a) Upon the request of an individual, *the secretary of state or an election administrator* may not include the individual's residential address on any *generally available* list of registered ~~voters~~ *electors* but may list only the *elector's name or names* if the individual:

(i) proves to the election administrator, *as provided in subsection (6)(b)*, that the individual, or a minor in the custody of the individual, has been the victim of partner or family member assault, stalking, custodial interference, or other offense involving bodily harm or threat of bodily harm to the individual or minor; or

(ii) proves to the election administrator, *as provided in subsection (6)(c)*, that a temporary restraining order or injunction has been issued by a judge or magistrate to restrain another person's access to the individual or minor.

(b) Proof of the victimization is conclusive upon exhibition to the election administrator of a criminal judgment, information and judgment, or affidavit of a county attorney clearly indicating the conviction and the identity of the victim.

(c) Proof of the issuance of a temporary restraining order or injunction is conclusive upon exhibition to the election administrator of the temporary restraining order or injunction."

**Section 9.** Section 13-2-116, MCA, is amended to read:

**"13-2-116. Precinct register.** (1) Before each election, the election administrator shall prepare *from the certified statewide voter registration list* a precinct register for each precinct *in the county* for use by the election judges. The register must contain an alphabetical list of the names, with addresses, of

the *legally registered electors and provisionally* registered electors, a space for the signature of the elector, and ~~such~~ other information as prescribed by the secretary of state.

(2) If some of the electors in a precinct are not eligible to receive all ballots at an election because of a combination of the elections of more than one political subdivision, the election administrator shall distinguish the names of those eligible for each ballot by whatever method will be clear and efficient.

(3) When several precincts have been combined at one polling place for an election, the election administrator may combine the electors from all precincts into one register or may provide separate registers for each precinct.

(4) Precinct registers need not be printed if the election will not be held."

**Section 10.** Section 13-2-122, MCA, is amended to read:

**"13-2-122. Charges for registers, elector lists, and mailing labels made available to public.** (1) Except as provided in ~~subsections~~ *subsection* (2) ~~and (3)~~, upon written request, the ~~registrar~~ *secretary of state or a local election administrator* shall furnish to any elector, for noncommercial use, a copy of the official precinct registers, a current list of *legally* registered electors, or mailing labels for registered electors. Upon delivery, the ~~registrar~~ *secretary of state or the local election administrator* may collect a charge not to exceed the actual cost of the register, list, or mailing labels.

~~(2) If the registrar receives in writing from a law enforcement officer or reserve officer, as defined in 7-32-201, a request that, for security reasons, the officer's and the officer's spouse's residential address, if the same as the officer's, not be disclosed, the registrar may not include the address on any register, list, or mailing labels disseminated pursuant to subsection (1).~~

~~(3)(2) An~~ *For an elector whose address information is protected from general distribution under 13-2-115(5) or (6), the secretary of state or a local election administrator may not include an individual's the elector's residential address on any register, list, or mailing labels but shall may list only the elector's name or names if the individual requests that the individual's address not be used and the individual proves to the election administrator those matters described in 13-2-115(7)(a)(i) or (7)(a)(ii).*

**Section 11.** Section 13-2-123, MCA, is amended to read:

**"13-2-123. Election administrator to provide list of electors to secretary of state.** (1) The election administrator in each county shall provide to the secretary of state ~~a list by precinct of all registered electors in the county. The list must include~~ the following information, when possible, for each elector:

- (a) name;
- (b) mailing address;
- (c) precinct number;
- ~~(d) registration number assigned by the county election administrator pursuant to 13-2-114;~~
- ~~(e)~~(d) residence address;
- ~~(f)~~(e) telephone number;
- (f) *driver's license number or last four digits of the elector's social security number;*
- (g) date of birth;



- (h) gender;
- (i) legislative house district;
- (j) date of registration; ~~and~~
- (k) whether the elector's name is on the active or inactive list of electors; *and*  
  - (l) *whether the elector is a legally registered elector or a provisionally registered elector.*

(2) *The information must be provided in accordance with rules adopted under [section 5].*

~~(2) (a) Except as provided in subsection (2)(b), the list provided pursuant to subsection (1) must be a paper copy.~~

~~(b) If the county election administrator also maintains the information in other media, such as on a computer disk or tape, and the secretary of state requests the information in that media, the county election administrator shall also provide the list in that media.~~

~~(3) In odd-numbered years, the list of electors required by subsection (1) must be delivered to the secretary of state by December 15.~~

~~(4) In even numbered years, the list of electors required by subsection (1) must be delivered to the secretary of state:~~

~~(a) for a primary election, no later than July 1, and the list must indicate any changes made up to and including the date of the June primary; and~~

~~(b) for a general or special election, 30 days prior to the close of registration before the election.~~

~~(5) Each election administrator may provide the secretary of state with a supplemental list of electors in even numbered years, giving the additions, deletions, and changes made between the time that the previous list was compiled and the close of registration."~~

**Section 12.** Section 13-2-205, MCA, is amended to read:

**"13-2-205. Procedure when prospective elector not qualified at time of registration.** An individual who is not eligible to register because of residence or age requirements but who will be eligible on or before election day may register if it appears that he will become qualified to vote by election day *apply for voter registration pursuant to [section 7] and be registered subject to verification procedures established pursuant to [section 6].*"

**Section 13.** Section 13-2-220, MCA, is amended to read:

**"13-2-220. Maintenance of active and inactive voter registration rolls lists for elections — rules by secretary of state.** (1) *The rules adopted by the secretary of state shall adopt rules specifying a list of procedures from which an election administrator shall choose at least one procedure for the maintenance of accurate voter registration rolls for use in elections.*

~~(2) The procedures specified by the secretary of state under [section 5] must include the following procedures, 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 ~~have~~ failed to vote *in the preceding federal general election* 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.

~~(3)~~(2) Any notices returned to the election administrator after using the procedures provided in subsection ~~(2)~~ (1) must be followed 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 confirmation notice, the election administrator shall move the elector to the inactive list.

~~(4)~~(3) 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."

**Section 14.** Section 13-2-402, MCA, is amended to read:

**"13-2-402. Reasons for cancellation.** The election administrator shall cancel the registration of an elector:

(1) at the written request of the registered elector;

(2) if a certificate of the death of the elector is filed or if the elector is reported as deceased by the department of public health and human services in the department's reports submitted to the county under 50-15-409;

(3) if the elector is of unsound mind as established by a court;

(4) if the incarceration of the elector in a penal institution for a felony conviction is legally established;

(5) if a certified copy of a court order directing the cancellation is filed with the election administrator;

(6) if the elector is successfully challenged and not allowed to vote at an election upon determination of an election judge;

(7) if a notice is received from *the secretary of state or from another county or state* that the elector has registered in ~~that~~ another county or state; or

(8) if the elector fails to respond to certain confirmation mailings and fails to vote in two consecutive federal general elections."

**Section 15.** Section 13-2-513, MCA, is amended to read:

**"13-2-513. Procedure for transferring registration.** ~~The~~ *Subject to the rules adopted under [section 5], the election administrator shall make the necessary corrections in the registration records in his office when he the election administrator receives a transfer form or corrected registration form if*

he is satisfied the form is valid. The original registration form may be fastened to the back of the new form, in which case the original and current forms must be retained, or the original registration form may be marked "canceled" and filed in a canceled file."

**Section 16.** Section 13-2-514, MCA, is amended to read:

**"13-2-514. Change of residence to another county.** (1) An elector who changes his residence to a different county within this state ~~must~~ shall register in his the new county of residence in order to vote in any election unless the change occurs less than 45 days before the election.

(2) An elector who changes his residence to a different county 45 days or less before an election may vote in person or by absentee ballot in the precinct and county where previously registered.

~~(3) The elector must state his correct name and residence address and date of residence change when offering to vote or when applying for an absentee ballot. The election administrator shall note the information on the elector's registration form if an absentee ballot application is received. The election judges shall note the change of address and date of residence change in the precinct register if the elector votes in person.~~

~~(4)(3) The registration information of an elector who votes under the provisions of subsection (2) of this section shall be canceled must be updated in the statewide voter registration list after the election pursuant to rules adopted under [section 5]."~~

**Section 17.** Section 13-2-601, MCA, is amended to read:

**"13-2-601. Name on Special addendum to precinct register prima facie evidence of right to vote.** (1) An elector may not vote at an election mentioned in this title unless his name appears on election day in the copy of the official precinct register furnished by the election administrator to the election judges. The fact that his name appears in the copy of the precinct register is prima facie evidence of his right to vote.

(2) The name of an elector who has been assigned to vote in a precinct other than the precinct in which he the person is registered, as provided in 13-3-213, must be printed on a special addendum to the precinct register in a form prescribed by the secretary of state. The fact that an elector's name appears on a special addendum to the precinct register is prima facie evidence of his right to vote in the precinct."

**Section 18.** Section 13-10-201, MCA, is amended to read:

**"13-10-201. Declaration for nomination.** (1) Each candidate in the primary election, except nonpartisan candidates filing under the provisions of chapter 14, shall send a declaration for nomination to the secretary of state or election administrator. A candidate may not file for more than one office. Each candidate for governor shall send a joint declaration for nomination with a candidate for lieutenant governor.

(2) A declaration for nomination must be filed in the office of:

(a) the secretary of state for placement of a name on the ballot for the presidential preference primary, a congressional office, a state or district office to be voted for in more than one county, a member of the legislature, or a judge of the district court;

(b) the election administrator for a county, municipal, precinct, or district office (other than a member of the legislature or judge of the district court) to be voted for in only one county.

(3) Each candidate shall sign the declaration and send with it the required filing fee or, in the case of an indigent candidate, send with it the documents required by 13-10-203. The declaration for nomination must be acknowledged by an officer empowered to acknowledge signatures or by the officer of the office at which the filing is made.

(4) The declaration, when filed, is conclusive evidence that the elector is a candidate for nomination by the elector's party.

(5) (a) The declaration for nomination must be in the form and contain the information prescribed by the secretary of state.

(b) A person seeking nomination to the legislature shall provide the secretary of state with a street address, legal description, or road designation to indicate the person's place of residence. If a candidate for the legislature changes residence, the candidate shall, within 15 days after the change, notify the secretary of state on a form prescribed by the secretary of state.

(c) The secretary of state and election administrator shall furnish declaration for nomination forms to individuals requesting them.

(6) Declarations for nomination must be filed no sooner than 135 days before the election in which the office first appears on the ballot and no later than 5 p.m., 75 days before the date of the primary election.

(7) A declaration for nomination form may be sent by facsimile transmission, if a facsimile facility is available for use by the election administrator or by the secretary of state, delivered in person, or mailed to the election administrator or to the secretary of state."

**Section 19.** 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 (5), a person seeking to become a write-in candidate for an office in any election shall file a declaration of intent. 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. Except as provided in subsections (2) and (3), the declaration must be filed no later than 5 p.m. on the 15th day before the election and must contain:

- (a) (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:

- (a) dies;
- (b) withdraws from the election; or
- (c) is charged with a felony offense.

(3) A person seeking to become a write-in candidate for a trustee position on a school board shall file a declaration of intent no later than 5 p.m. on the 26th day before the election.

(4) 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 and school district clerk shall notify the election judges in the county or district of the names of write-in candidates who have filed a declaration of intent.

(5) The requirements in subsection (1) do not apply to a write-in candidate seeking election to an office for which a candidate has not filed a declaration or petition for nomination or a declaration of intent.

(6) A declaration of intent may be sent by facsimile transmission, if a facsimile facility is available for use by the election administrator or by the secretary of state, delivered in person, or mailed to the election administrator or to the secretary of state.

(7) *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.*

**Section 20.** Section 13-13-112, MCA, is amended to read:

**"13-13-112. Display of instructions for electors.** (1) Instructions for electors on how to prepare their ballots or use machines or devices must be posted in each compartment provided for the preparation of ballots and elsewhere in the polling place.

(2) The instructions must be in easily read type, 18 point or larger, and explain ~~how to~~:

- (a) *how to* obtain ballots for voting;
- (b) *how to* prepare ballots for deposit in the ballot box; ~~and~~
- (c) *how to* obtain a new ballot in place of one spoiled by accident;
- (d) *how to vote provisionally pursuant to [section 22];*
- (e) *the election date and the hours the polls are open; and*
- (f) *instructions for first-time voters who registered by mail.*

(3) If the instructions for use of the machine or device are printed on the machine or device or are part of a ballot package given to each elector, separate instructions need not be posted in the compartment.

(4) Official ballots for the precinct, clearly marked "sample" across the face, ~~shall~~ *must* be posted in each booth or compartment and in conspicuous places about the polling place in all precincts where paper ballots are used. Diagrams showing the arrangement of the ballot for that precinct ~~shall~~ *must* be posted in

conspicuous places ~~about~~ in the polling place in all precincts using machines or devices.”

**Section 21.** Section 13-13-114, MCA, is amended to read:

**“13-13-114. Marking Voter identification and marking precinct register book before elector votes — provisional voting.** (1) ~~(a) Before an elector is permitted to receive a ballot or vote, he shall sign his name on the place designated in the precinct register. Before signing the register, the elector shall state his~~ the elector shall present to an election judge a current photo identification showing the elector's name and current address. If the elector does not present photo identification ~~the name or address is not as listed in the precinct register, including but not limited to a valid driver's license, a school district or postsecondary education photo identification, or a tribal photo identification,~~ the elector shall present a current utility bill, bank statement, paycheck, notice of confirmation of voter registration issued pursuant to 13-2-207, government check, or other government document that shows the elector's name and current address.

(b) An elector who provides the information listed in subsection (1)(a) may sign the precinct register and must be provided with a regular ballot to vote.

(c) If the information provided in subsection (1)(a) differs from information in the precinct register but an election judge determines the information provided is sufficient to verify the voter's identity and eligibility to vote pursuant to 13-2-512, the elector ~~must~~ may sign the precinct register, complete a transfer form or new registration form to correct the elector's voter registration information, and vote.

~~(d) The~~ An election judge shall write “transfer form” or “registration form” beside the name of any elector submitting a form. ~~No elector may sign the precinct register unless his name and address are the same as shown in the register or the proper corrections have been made.~~

(2) If the information presented under subsection (1) is insufficient to verify the elector's identity and eligibility to vote or if the elector's name does not appear in the precinct register, the elector may sign the precinct register and cast a provisional ballot as provided in [section 22].

~~(2)(3)~~ If the elector is not able to sign ~~his~~ the elector's name to the precinct register, a fingerprint or other identifying mark may be used.

~~(3)(4)~~ If the elector fails or refuses to sign ~~his~~ the elector's name or, if unable to write, fails to provide a fingerprint or other identifying mark, ~~he~~ the elector may ~~not vote~~ cast a provisional ballot as provided in [section 22].”

**Section 22. Provisional voting in person.** (1) Before being given a ballot, an elector casting a provisional ballot:

(a) must be given information, in a form prescribed by the secretary of state, explaining how to vote provisionally, what information must be provided by the elector to verify the elector's eligibility, and how to determine whether the elector's provisional ballot is or is not counted and, if not, the reasons why;

(b) shall sign an affirmation in a form prescribed by the secretary of state swearing that, to the best of the elector's knowledge, the elector is eligible to vote in the election and precinct and is aware of the penalty for false swearing; and

(c) shall cast and return the provisional ballot to an election judge, who shall place the ballot into an envelope prescribed by the secretary of state for provisional ballots.

(2) A provisional ballot must be handled as provided in [section 36].

(3) An elector making a false affirmation under this section is subject to the penalty for false swearing provided in 45-7-202.

**Section 23. Fail-safe and provisional voting by mail.** (1) To ensure the election administrator has information sufficient to determine the elector's eligibility to vote, an elector voting by mail may enclose in the outer return envelope, together with the voted ballot in the secrecy envelope, a copy of a current and valid photo identification with the elector's name or a copy of a current utility bill, bank statement, paycheck, notice of confirmation of voter registration issued pursuant to 13-2-207, government check, or other government document that shows the elector's name and current address.

(2) If a provisionally registered elector voting by mail does not enclose with the ballot the information described in subsection (1), if the information provided under subsection (1) is invalid or insufficient to verify the elector's eligibility, or if the elector's name does not appear on the precinct register, the elector's ballot must be handled as a provisional ballot under [section 36].

**Section 24. Rulemaking on provisional voting, absentee ballots, and challenged ballots.** (1) The secretary of state shall adopt rules to:

(a) implement the provisions of 13-13-114 and [sections 22 through 24] concerning verification of voter identification and eligibility;

(b) establish standards for determining the sufficiency of information provided on absentee ballot return envelopes pursuant to 13-13-241;

(c) implement the provisions of [section 36] on the handling and counting of provisional and challenged ballots, including the establishment of procedures for verifying voter registration and eligibility information with respect to the ballots.

(2) The rules may not conflict with rules established under [section 6].

**Section 25.** Section 13-13-201, MCA, is amended to read:

**"13-13-201. Voting by absentee ballot — procedures.** (1) A ~~qualified~~ *legally registered elector or provisionally registered elector* is entitled to vote by absentee ballot as provided for in this part.

(2) The elector may vote the absentee ballot by:

(a) marking the ballot in the manner specified;

(b) placing the marked ballot in the secrecy envelope, free of any identifying marks;

(c) placing the secrecy envelope containing one ballot for each election being held in the return and verification envelope;

(d) executing the affidavit printed on the return and verification envelope; and

(e) returning the return and verification envelope with the secrecy envelope containing the ballot or ballots enclosed, as provided in 13-13-221.

(3) (a) *The elector may also enclose in the outer return envelope a copy of the elector's photo identification showing the elector's name, including but not limited to a valid driver's license, a school district or postsecondary education photo identification, or a tribal photo identification. If the elector does not enclose a photo identification, the elector shall enclose a copy of a current utility bill, bank statement, paycheck, notice of confirmation of voter registration issued*

pursuant to 13-2-207, government check, or other government document that shows the elector's name and current address.

(b) If the elector fails to provide the information required under subsection (3)(a) or the information provided is insufficient to verify the elector's identity and eligibility, the elector's ballot must be handled as a provisional ballot.”

**Section 26.** Section 13-13-204, MCA, is amended to read:

**“13-13-204. Authority to vote in person — printing error or ballot destroyed — failure to receive ballot — effect of absentee elector's death.** (1) If an elector has voted by absentee ballot but the absentee ballot contains printing errors or omissions, except that the name of a candidate who has died since the printing of the ballot and that appears on the ballot does not constitute an error or omission, the elector may vote in person in any manner at the elector's polling place.

(2) If an elector does not receive an absentee ballot or if the absentee ballot was destroyed, the elector may appear at the appropriate polling place on election day and vote in person after signing an affidavit, in the form prescribed by the secretary of state, swearing that the elector's ballot has not been received or was destroyed. ~~Before the ballot is given to the elector, the election judge shall write upon the back of the ballot the number of the ballot. The ballot may be cast out if it appears to the court to have been wrongfully or illegally voted. The ballot must be handled as a provisional ballot under [section 36].~~

(3) If an elector votes by absentee ballot and dies between the time of balloting and election day, the deceased elector's ballot does not count.”

**Section 27.** Section 13-13-205, MCA, is amended to read:

**“13-13-205. When ballots to be available.** (1) The election administrator shall ensure that ballots are printed and available for absentee voting at least ~~45~~ 30 days prior to an election for those elections held in compliance with 13-1-104(1) and 13-1-107(1).

(2) For elections held in compliance with 13-1-104(2) and (3) and 13-1-107(2), the election administrator shall ensure that ballots are printed and available for absentee voting at least 20 days prior to an election.

(3) *If ballots are sent more than 30 days before an election, the election administrator shall include a notice that the voter information pamphlet, when required to be distributed, will be provided pursuant to 13-27-410.”*

**Section 28.** Section 13-13-212, MCA, is amended to read:

**“13-13-212. Application for absentee ballot — special provisions.** (1) An elector may apply for an absentee ballot, *using only a standardized form provided by rule by the secretary of state*, 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.

(2) An elector in the United States service absent from the state and county in which the elector is registered may apply for an absentee ballot as follows:

(a) as provided in subsection (1);

(b) by using the federal postcard application signed by the applicant and made within the time period specified in 13-13-211; or

(c) if eligible, by using the federal write-in ballot as provided in 13-13-271(3).



(3) (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 special absentee election board provided for 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 special absentee election board at the elector's place of confinement, hospitalization, or residence within the county.

(c) A request under this subsection (3) must be received by the election administrator by noon on election day.

(4) An elector who has made a request for an absentee ballot by one of the methods provided in this section may, in the event of the death of a candidate after the primary election but before the general election, make a request for a replacement ballot. The request for a replacement ballot may be made orally to the election administrator."

**Section 29.** Section 13-13-213, MCA, is amended to read:

**"13-13-213. Transmission of application to election administrator — delivery of ballot.** (1) Except as provided in subsection ~~(2)~~ (3), the elector shall:

(a) ~~forward the application by mail~~ *the application directly to the election administrator;* ~~or~~

(b) ~~deliver~~ *the application* in person to the election administrator; *or*

(c) *hand the application to a third party for delivery to the election administrator, if the person receiving the ballot application provides to the elector a receipt in a form designated by the secretary of state.*

(2) The election administrator shall compare the signature on the application with the applicant's signature on the registration card. If convinced the individual making the application is the same as the one whose name appears on the registration card, the election administrator shall deliver the ballot to the elector in person or as otherwise provided in 13-13-214.

~~(2)~~(3) In lieu of the requirement provided in subsection (1), an elector who requests an absentee ballot pursuant to 13-13-212(3) may return the application to the special absentee election board. Upon receipt of the application, the special absentee election board shall examine the signatures on the application and a copy of the voting registration card to be provided by the election administrator. If the special absentee election board believes that the applicant is the same person as the one whose name appears on the registration card, the special absentee election board shall provide a ballot to the elector."

**Section 30.** Section 13-13-214, MCA, is amended to read:

**"13-13-214. Mailing ballot to elector.** (1) (a) Except as provided in 13-13-213 and in subsection (1)(b) of this section, as soon as the official ballots are printed, the election administrator shall send by mail, postage prepaid, to each *legally registered elector and provisionally registered elector* from whom the election administrator has received a valid *absentee ballot* application whatever official ballots are necessary. Ballots must be sent immediately ~~to~~ ~~electors submitting valid requests~~ after the official ballots are printed.

(b) The election administrator may deliver a ballot in person to an individual other than the elector if:

(i) the elector has designated the individual, either by a signed letter or by making the designation on the application form in a manner prescribed by the secretary of state;

(ii) the individual taking delivery of the ballot on behalf of the elector verifies, by signature, receipt of the ballot;

(iii) the election administrator believes that the individual receiving the ballot is the designated person; and

(iv) the designated person has not previously picked up ballots for four other electors.

(2) The election administrator shall enclose with the ballots:

(a) a secrecy envelope, free of any marks that would identify the voter; and

(b) a self-addressed envelope for the return of the ballots. An affirmation in the form prescribed by the secretary of state must be printed on the back of the envelope.

(3) The election administrator shall stamp the ballots provided to an absentee elector, as provided in 13-13-116, and remove the stubs from the ballots, attaching the stubs to the elector's absentee ballot application.

(4) Both the envelope in which the ballot is mailed to an elector in the United States service and the return envelope must have printed across the face the information and graphics and be of the color prescribed by the secretary of state consistent with the regulations established by the federal election commission, the U.S. postal service, or other federal agency.

(5) If the ballots sent to the elector are for a primary election, the election administrator shall enclose an extra envelope marked "For Unvoted Party Ballot(s)". This envelope may not be numbered or marked in any way so that it can be identified as being used by any one elector.

(6) Instructions for voting must be enclosed with the ballots. Instructions for primary elections must include use of the envelope for unvoted ballots. The instructions must include information concerning the type or types of writing instruments that may be used to mark the absentee ballot. The instructions must include information regarding use of the secrecy envelope and use of the return and verification envelope. The election administrator shall include a voter information pamphlet with the instructions if:

(a) a statewide ballot issue appears on the ballot mailed to the elector; and

(b) ~~the elector is out of the state or will be out of the state at the time of the election; and~~

(c) ~~the elector requests a voter information pamphlet.~~

(7) The return envelope must be self-addressed to the election administrator."

**Section 31.** Section 13-13-232, MCA, is amended to read:

**"13-13-232. Delivery of ballots, secrecy envelopes, and return envelopes to election judges — ballots to be rejected.** (1) ~~If the an~~ absentee ballot is received prior to delivery of the official ballots to the election judges, the election administrator shall *process it according to 13-13-241 and then* deliver the unopened ~~return~~ secrecy envelope to the judges at the same time that the ballots are delivered. ~~The return envelopes must be opened and the ballots processed according to the procedures described in 13-13-241.~~

(2) If an absentee ballot is received after the official ballots are delivered to the election judges but prior to the close of the polls, the election administrator shall process it according to 13-13-241 and shall then immediately deliver the unopened return envelope to the judges. The return envelopes must be opened and the ballots processed according to the procedures described in 13-13-241.

(3) If the election administrator receives an absentee ballot for which an application or request was not made or received as required by this part, the election administrator shall endorse upon the elector's envelope the date and exact time of receipt and the words "to be rejected". Absentee ballots endorsed in this manner must be retained by the election administrator and placed with the proper records when they are returned to the election administrator handled in the same manner as provided in 13-13-243."

**Section 32.** Section 13-13-241, MCA, is amended to read:

**"13-13-241. Examination of absentee ballot return envelopes and affirmations while polls open — deposit of absentee and unvoted ballots.** (1) (a) ~~While the polls are open, the election judges may~~ As soon as an absentee ballot is received, an election administrator shall compare the signature of the elector on the absentee ballot request and affirmation with the signature on the absentee ballot return envelope. ~~If they find that the signatures correspond, that the affirmation is sufficient, and that the absentee elector is qualified, they may open the absentee ballot return envelope~~ Except as provided in subsection (2), after comparing the signatures, the election administrator or an election judge shall open the outer return envelope and determine whether the elector's voter identification information enclosed pursuant to 13-13-201 is sufficient pursuant to rules adopted under [section 6]. If a voted absentee ballot has not been placed in a secrecy envelope, the election administrator shall place the ballot in a secrecy envelope without examining the ballot.

(b) In a primary election, unvoted party ballots must be separated from the secrecy envelopes and handled without being removed from their enclosure envelopes.

(c) A ballot cast by an elector who provided sufficient information must be handled as provided in subsection (3). A ballot cast by an elector whose voter information is insufficient or whose name does not appear on the precinct register must be handled as a provisional ballot under [section 36]. The election administrator shall notify the absentee elector by mail or by the most expedient method available under rules adopted by the secretary of state that the elector's identification information was insufficient and that the elector's ballot will be treated as a provisional ballot until the elector provides sufficient information, pursuant to rules adopted by the secretary of state. If the elector is notified by mail, the election administrator shall provide a self-addressed return envelope along with a description of the information necessary for the absentee elector to reclassify the provisional ballot as a regular ballot.

(2) If the ~~absentee ballot does not meet the requirements specified in subsection (1)~~ signature on the absentee ballot return envelope does not match the signature on the absentee ballot request form, ~~it~~ the absentee ballot must be rejected. ~~The~~ The election administrator, without opening the absentee ballot return envelope, shall mark across it the reason for rejection and a majority of the judges shall sign their initials. Unopened rejected absentee ballot return envelopes must be handled in the same manner as provided for rejected ballots in 13-13-243.

(3) After ~~opening the~~ *receiving an* absentee ballot ~~return~~ *secrecy* envelope ~~and, without opening the secrecy envelope, they the election judges shall on election day place the secrecy envelope in the proper ballot box. In a primary election, the unvoted ballots must be deposited in the unvoted ballot box without being removed from their enclosure envelopes.~~

~~(4) After opening the absentee ballot return envelope and if the ballot has not been placed in the secrecy envelope, without unfolding the ballot or permitting it to be examined, the election judges shall place the ballot in the secrecy envelope and place the secrecy envelope in the proper ballot box."~~

**Section 33.** Section 13-13-301, MCA, is amended to read:

**"13-13-301. Challenges on election day.** (1) An elector's right to vote may be challenged on election day by any registered elector by orally stating to the election judges the grounds of the challenge.

(2) An individual offering to vote may be orally challenged by any elector of the county upon the following grounds:

- ~~(a) that he is not the individual whose name appears on the register;~~
- ~~(b) that he does not reside at the residence listed unless the elector is voting under the provisions of 13-2-512 and 13-2-514;~~
- ~~(c) that he the elector is of unsound mind, as determined by a court;~~
- ~~(d)(b) that he the elector has voted before in that election; or~~
- ~~(e)(c) that he the elector has been convicted of a felony and is serving a sentence in a penal institution.~~

(3) *An elector challenged under this section may cast a provisional ballot, which must be handled as a provisional ballot under [section 36]."*

**Section 34.** Section 13-14-112, MCA, is amended to read:

**"13-14-112. Declarations for nomination — fee.** (1) Nonpartisan candidates shall file declarations for nomination as required by the primary election laws in a form prescribed by the secretary of state except as provided in 13-14-113. *A candidate may not file for more than one office.*

(2) Declarations may not indicate political affiliation. The candidate may not state in ~~his~~ *the* declaration any principles or measures ~~he~~ *that the candidate* advocates or any slogans.

(3) Each individual filing a declaration shall pay the fee prescribed by law for the position ~~he~~ *that the individual* seeks.

(4) Declarations ~~shall~~ *must* be filed in the office of the secretary of state or the appropriate election administrator as provided in 13-10-201. Time of filing ~~shall~~ *must* be the same as provided in 13-10-201."

**Section 35.** Section 13-14-113, MCA, is amended to read:

**"13-14-113. Filing for offices without salary or fees.** (1) Candidates for nonpartisan offices for which ~~no~~ a salary or fees are *not* paid shall file with the appropriate official a petition for nomination containing the same information and the oath of the candidate required for a declaration of nomination in a form prescribed by the secretary of state.

(2) The petition must contain the signatures of registered electors of the election district in which the office will be on the ballot. The number of signatures must be equal to 5% of the total vote cast for the successful candidate

for that office at the last general election, but ~~in no case~~ may ~~it~~ not be less than five signatures.

(3) The number of signatures necessary for a petition for nomination for an office not previously on the ballot or for which the election district boundaries have changed since the last general election ~~shall~~ must be determined by the secretary of state.

(4) Petitions for nomination ~~shall~~ must be filed at the same time provided in 13-10-201 for other candidates and offices.

(5) *A candidate may not file for more than one office.*"

**Section 36. Handling and counting provisional and challenged ballots.** (1) To verify eligibility to vote, an elector who casts a provisional ballot in person shall provide information to the election administrator as listed below:

(a) present in person at the office of the election administrator by 5 p.m. on the day after the election a photo identification or other identifying document as described in 13-13-114(1)(a);

(b) send by facsimile or electronic mail by 5 p.m. on the day after the election a copy or scanned document that meets the identification requirements of 13-13-114(1)(a); or

(c) mail a copy or nonreturnable original document described in 13-13-114(1)(a) in a self-addressed return envelope provided by the election administrator. If the elector mails a document, the postmark on the envelope must be for the day of the election or the day following the election.

(2) The election administrator shall determine prior to an election whether an absentee voter has provided sufficient identification to allow a ballot to be counted. If the information is insufficient, the election administrator shall follow procedures described in 13-13-241 to allow an absentee elector who failed to provide proper identifying information in the outer return envelope to verify eligibility to vote. An absentee elector whose ballot is determined to be provisional has until 5 p.m. on the day after the election to provide valid identification information either in person, by facsimile, by electronic mail, or by mail postmarked on the day of the election or the day after the election.

(3) A provisional ballot must be counted if the election administrator verifies the elector's eligibility pursuant to rules adopted under [section 24]. However, a provisional ballot may not be counted if the election administrator cannot verify the elector's eligibility under the rules.

(4) The election administrator shall provide an elector who cast a provisional ballot but whose ballot was not counted with the reasons why the ballot was not counted.

(5) A provisional ballot cast by an elector whose voter information is verified before 5 p.m. on the day after the election must be removed from its provisional envelope, grouped with other ballots in a manner that allows for the secrecy of the ballot to the greatest extent possible, and counted as any other ballot.

**Section 37.** Section 13-15-111, MCA, is amended to read:

**"13-15-111. Write-in elections — general election.** (1) An individual elected by having ~~his~~ *the individual's* name written in at the general election and receiving the largest number of votes shall:

(a) file with the secretary of state or election administrator, not later than 10 days after the official canvass, a written declaration indicating ~~his~~ *the individual's* acceptance of the position for which ~~he was~~ elected;

(b) comply with the provisions of 13-37-225; and

(c) pay the required filing fee or, if indigent, comply with 13-10-203.

(2) If an individual fails to ~~file the declaration as required under~~ *comply with the requirements in* subsection (1)(a), ~~he~~ *the individual* may not assume the position for which ~~he was~~ elected."

**Section 38.** Section 13-15-401, MCA, is amended to read:

**"13-15-401. Governing body as board of county canvassers.** (1) The governing body of a county or consolidated local government is ex officio a board of county canvassers and shall meet as the board of county canvassers at the usual place of meeting of the governing body within 3 to 7 days after each election, at a time determined by the board, to canvass the returns.

(2) If one or more of the members of the governing body cannot attend the meeting, the member's place must be filled by one or more county officers chosen by the remaining members of the governing body so that the board of county canvassers' membership equals the membership of the governing body.

(3) The governing body of any political subdivision in the county that participated in the election may join with the governing body of the county or consolidated local government in canvassing the votes cast at the election.

(4) The election administrator is secretary of the board of county canvassers and shall keep minutes of the meeting of the board and file them in the official records of the administrator's office."

**Section 39.** Section 13-15-402, MCA, is amended to read:

**"13-15-402. Canvass of votes by board — procedures if all returns not received by time of canvass.** (1) If all returns are in at the time of the meeting, the board of county canvassers shall immediately canvass the returns.

(2) If all returns are not received, the board shall postpone the canvass from day to day until all returns are received.

(3) If the returns from an election precinct have not been received by the election administrator within 3 to 7 days after an election, ~~he~~ *the election administrator* shall immediately advise the chief election judge.

(4) If it appears to the board that the polls were not open in a precinct, the board shall certify this to the election administrator. The election administrator shall enter the certification in the minutes and in the record required by 13-15-404."

**Section 40.** Section 13-19-313, MCA, is amended to read:

**"13-19-313. Notice to elector — opportunity to resolve questions.** (1) As soon as possible after receipt of an elector's return/verification envelope, the election administrator shall give notice to the elector, either by telephone or by first-class mail, if the election administrator:

(a) is unable to verify the elector's signature under 13-19-310; or

(b) has discovered a procedural mistake made by the elector that would invalidate the elector's ballot under 13-19-311.

(2) The election administrator shall inform the elector that the elector may appear in person at the election administrator's office prior to 8 p.m. on election day and verify the signature or correct the mistake.

(3) Any elector appearing pursuant to subsection (2) must be permitted to:

(a) verify the elector's signature, after proof of identification, by affirming that the signature is in fact the elector's or by completing a new registration card containing the elector's current signature;

(b) correct any minor mistake if the correction would render the ballot valid;  
or

(c) if necessary, request and receive a replacement ballot and vote it at that time.

(4) If a mail ballot is returned, the election administrator shall *investigate the reason for the return and* mail a confirmation notice ~~provided for in 13-2-207.~~ *However, the* The notice must be sent by forwardable, first-class mail with a postage-paid, return-addressed notice. If the confirmation notice is returned to the election administrator, the elector must be placed on an inactive list until that elector becomes a qualified elector."

**Section 41.** Section 13-22-107, MCA, is amended to read:

**"13-22-107. Funding.** (1) ~~Public~~ *Except for compensation for time spent by employees of the secretary of state and the superintendent of public instruction, public money may not be used to support or fund the youth voting program established in this chapter.*

(2) A nonprofit corporation may be formed subject to the provisions of Title 35, chapter 2, to solicit donations from private sources. Money solicited under this subsection must be used only for the youth voting program."

**Section 42.** Section 13-27-410, MCA, is amended to read:

**"13-27-410. Printing and distribution of voter information pamphlet.** (1) The secretary of state shall arrange with the department of administration by requisition for the printing and delivery of a voter information pamphlet for all ballot issues to be submitted to the people at least 110 days before the election at which they will be submitted. The requisition must include a delivery list providing for shipment of the required number of pamphlets to each county and to the secretary of state.

(2) The secretary of state shall estimate the number of copies necessary to furnish one copy to each voter in each county, except that two or more voters with the same mailing address and the same last name may be counted as one voter. The secretary of state shall provide for an extra supply of the pamphlets in determining the number of voter pamphlets to be ordered in the requisition.

(3) The department of administration shall call for bids and contract with the lowest bidder for the printing and delivery of the voter information pamphlet. The contract must require completion of printing and shipment, as specified on the delivery list, of the voter information pamphlets by not later than 45 days before the election at which the ballot issues will be voted on by the people.

(4) The county official responsible for voter registration in each county shall mail one copy of the voter information pamphlet to each registered voter in the county who is on the active voter list, except that two or more voters with the same mailing address and the same last name may be counted as one voter. *The*

*mailing label may include an address line that addresses the voter or the current resident.* The mailing must take place no later than ~~2 weeks~~ 30 days before the election.

(5) Ten copies of the voter information pamphlet must be available at each precinct for use by any voter wishing to read the explanatory information and complete text before voting on the ballot issues.”

**Section 43.** Section 13-37-250, MCA, is amended to read:

**“13-37-250. Voluntary spending limits.** (1) (a) The following statement may be used in printed matter and in broadcast advertisements and may appear in the voter information pamphlet prepared by the secretary of state: “According to the Office of the Commissioner of Political Practices, ..... is in compliance with the voluntary expenditure limits established under Montana law.”

(b) The treasurer of each political committee, as defined in 13-1-101 ~~(18)(b)~~ *(19)(b)*, who files a certification on a ballot issue pursuant to 13-37-201 may also file with the commissioner a sworn statement that the committee will not exceed the voluntary expenditure limits of this section. If a sworn statement is made, it must be filed with the commissioner within 30 days of the certification of the political committee.

(c) A political committee that has not filed a sworn statement with the commissioner may not distribute any printed matter or pay for any broadcast claiming to be in compliance with the voluntary expenditure limits of this section.

(d) A political committee may not use evidence of compliance with the voluntary expenditure limits of this section to imply to the public that the committee has received endorsement or approval by the state of Montana.

(2) For the purposes of this section, the expenditures made by a political committee consist of the aggregate total of the following during the calendar year:

(a) all committee loans or expenditures made by check or cash; and

(b) the dollar value of all in-kind contributions made or received by the committee.

(3) In order to be identified as a political committee in compliance with the voluntary expenditure limits of this section, the committee’s expenditures, as described in subsection (2), may not exceed \$150,000.

(4) A political committee that files with the commissioner a sworn statement to abide by the voluntary expenditure limits of this section but that exceeds those limits shall pay a fine of \$5,000 to the commissioner. This money must be deposited in a separate fund to be used to support the enforcement programs of the office of the commissioner.”

**Section 44. Repealer.** Sections 13-2-114, 13-2-202, 13-2-203, 13-2-219, 13-2-403, 13-2-404, 13-2-515, 13-2-603, 13-13-304, 13-13-305, 13-13-306, 13-13-307, 13-13-309, 13-13-310, and 13-13-311, MCA, are repealed.

**Section 45. Codification instruction.** (1) [Sections 4 through 7] are intended to be codified as an integral part of Title 13, chapter 2, part 1, and the provisions of Title 13, chapter 2, part 1, apply to [sections 4 through 7].

(2) [Sections 22 through 24] are intended to be codified as an integral part of Title 13, chapter 13, and the provisions of Title 13, chapter 13, apply to [sections 22 through 24].



(3) [Section 36] is intended to be codified as an integral part of Title 13, chapter 15, part 1, and the provisions of Title 13, chapter 15, part 1, apply to [section 36].

**Section 46. Effective date.** [This act] is effective January 1, 2004.

Approved April 24, 2003

## CHAPTER NO. 476

[HB 517]

AN ACT CLARIFYING THAT A CITY OR COUNTY MAY IMPOSE MILL LEVIES FOR AIRPORTS EVEN IF THE AIRPORT OR AIRPORT AUTHORITY HAS NOT MADE A LEVY REQUEST IN THE PRIOR 2 YEARS; AMENDING SECTION 15-10-420, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 15-10-420, MCA, is amended to read:

**“15-10-420. Procedure for calculating levy.** (1) (a) Subject to the provisions of this section, a governmental entity that is authorized to impose mills may impose a mill levy sufficient to generate the amount of property taxes actually assessed in the prior year plus one-half of the average rate of inflation for the prior 3 years. The maximum number of mills that a governmental entity may impose is established by calculating the number of mills required to generate the amount of property tax actually assessed in the governmental unit in the prior year based on the current year taxable value, less the current year's value of newly taxable property, plus one-half of the average rate of inflation for the prior 3 years.

(b) A governmental entity that does not impose the maximum number of mills authorized under subsection (1)(a) may carry forward the authority to impose the number of mills equal to the difference between the actual number of mills imposed and the maximum number of mills authorized to be imposed. The mill authority carried forward may be imposed in a subsequent tax year.

(c) For the purposes of subsection (1)(a), the department shall calculate one-half of the average rate of inflation for the prior 3 years by using the consumer price index, U.S. city average, all urban consumers, using the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor.

(2) A governmental entity may apply the levy calculated pursuant to subsection (1)(a) plus any additional levies authorized by the voters, as provided in 15-10-425, to all property in the governmental unit, including newly taxable property.

(3) For purposes of this section, newly taxable property includes:

- (a) annexation of real property and improvements into a taxing unit;
- (b) construction, expansion, or remodeling of improvements;
- (c) transfer of property into a taxing unit;
- (d) subdivision of real property; and
- (e) transfer of property from tax-exempt to taxable status.

(4) (a) For the purposes of subsection (1), the taxable value of newly taxable property includes the release of taxable value from the incremental taxable value of a tax increment financing district because of:

- (i) a change in the boundary of a tax increment financing district;
- (ii) an increase in the base value of the tax increment financing district pursuant to 7-15-4287; or
- (iii) the termination of a tax increment financing district.

(b) For the purpose of subsection (3)(d), the subdivision of real property includes the first sale of real property that results in the property being taxable as class four property or as nonagricultural land as described in 15-6-133(1)(c).

(c) For the purposes of this section, newly taxable property does not include an increase in appraised value of land that was previously valued at 75% of the value of improvements on the land, as provided in 15-7-111(4) and (5), as those subsections applied on December 31, 2001.

(5) Subject to subsection (8), subsection (1)(a) does not apply to:

- (a) school district levies established in Title 20; or
- (b) the portion of a governmental entity's property tax levy for premium contributions for group benefits excluded under 2-9-212 or 2-18-703.

(6) For purposes of subsection (1)(a), taxes imposed do not include net or gross proceeds taxes received under 15-6-131 and 15-6-132.

(7) In determining the maximum number of mills in subsection (1)(a), the governmental entity may increase the number of mills to account for a decrease in reimbursements.

(8) The department shall calculate, on a statewide basis, the number of mills to be imposed for purposes of 15-10-107, 20-9-331, 20-9-333, 20-9-360, 20-25-423, and 20-25-439. However, the number of mills calculated by the department may not exceed the mill levy limits established in those sections. The mill calculation must be established in whole mills. If the mill levy calculation does not result in a whole number of mills, then the calculation must be rounded up to the nearest whole mill.

(9) (a) The provisions of subsection (1) do not prevent or restrict:

- (i) a judgment levy under 2-9-316 or 7-7-2202;
  - (ii) a levy to repay taxes paid under protest as provided in 15-1-402; or
  - (iii) an emergency levy authorized under 10-3-405, 20-9-168, or 20-15-326.
- (b) A levy authorized under subsection (9)(a) may not be included in the amount of property taxes actually assessed in a subsequent year.

(10) *A governmental entity may levy mills for the support of airports as authorized in 67-10-402, 67-11-301, or 67-11-302 even though the governmental entity has not imposed a levy for the airport or the airport authority in either of the previous 2 years and the airport or airport authority has not been appropriated operating funds by a county or municipality during that time.*

~~(10)~~ (11) The department may adopt rules to implement this section. The rules may include a method for calculating the percentage of change in valuation for purposes of determining the elimination of property, new improvements, or newly taxable property in a governmental unit."

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

Approved April 24, 2003

## **CHAPTER NO. 477**

[HB 538]

AN ACT GENERALLY REVISING THE LAWS GOVERNING CERTIFICATES OF TITLE AND REGISTRATION OF CERTAIN MOTOR VEHICLES; IMPLEMENTING BUSINESS PRACTICES RECOMMENDED AS PART OF THE MOTOR VEHICLE INFORMATION TECHNOLOGY PROJECT AUTHORIZED BY THE 57TH LEGISLATURE; ENABLING A GRADUAL TRANSITION FROM PAPER-BASED TO ELECTRONIC TRANSACTIONS FOR VEHICLE TITLING; REMOVING STATUTORY IMPEDIMENTS TO THE USE OF ELECTRONIC TRANSACTIONS FOR ISSUING TITLES FOR AND THE REGISTRATION OF CERTAIN VEHICLES; DEFINING CERTAIN TERMS RELATED TO THE ISSUING OF A TITLE AND THE REGISTRATION OF CERTAIN VEHICLES; CLARIFYING THE REQUIREMENTS FOR APPLYING FOR, ISSUING, AND TRANSFERRING A CERTIFICATE OF TITLE; REVISING AND CLARIFYING DUTIES OF THE DEPARTMENT OF JUSTICE AND COUNTY TREASURERS CONCERNING THE ISSUING OF TITLES AND REGISTRATION PROCESSES; REQUIRING ISSUANCE OF A CERTIFICATE OF TITLE ONLY IF REQUESTED BY THE VEHICLE OWNER; ALLOWING FOR DELAYED TITLE ISSUANCE; AUTHORIZING THE DEPARTMENT TO REFUSE ISSUANCE OF A CERTIFICATE OF TITLE IN CERTAIN CIRCUMSTANCES; CLARIFYING THE REQUIREMENTS FOR VOLUNTARY AND INVOLUNTARY TRANSFER OF VEHICLE INTERESTS; CLARIFYING THE REQUIREMENTS FOR ISSUANCE OF A CERTIFICATE OF TITLE FOR A SALVAGE VEHICLE; AUTHORIZING AND STANDARDIZING ISSUANCE OF TEMPORARY REGISTRATION PERMITS TO ALLOW THE OPERATION OF A VEHICLE PRIOR TO COMPLETION OF THE ISSUANCE OF TITLE PROCESS; REPLACING THE TERM "CERTIFICATE OF OWNERSHIP" WITH "CERTIFICATE OF TITLE" FOR CERTAIN MOTOR VEHICLES; APPLYING THE CERTIFICATE OF TITLE REQUIREMENTS FOR PASSENGER VEHICLES TO MOTORBOATS, SAILBOATS 12 FEET IN LENGTH OR LONGER, AND SNOWMOBILES; REVISING THE AUTHORITY OF CERTAIN VEHICLE DEALERS TO ISSUE TEMPORARY REGISTRATION PERMITS; CLARIFYING THE DEFINITION OF "OFF-HIGHWAY VEHICLE"; CLARIFYING THE REQUIREMENTS FOR OFF-HIGHWAY VEHICLE DECAL REGISTRATION; AUTHORIZING THE USE OF AN ELECTRONIC RECORD OF TITLE AND AN ELECTRONIC RECORD OF REGISTRATION FOR VEHICLE CERTIFICATE OF TITLE AND REGISTRATION TRANSACTIONS; CLARIFYING THE RECORDKEEPING DUTIES OF THE DEPARTMENT CONCERNING VEHICLES; CLARIFYING AND STANDARDIZING THE PROCESSES FOR THE FILING AND PERFECTION OF CERTAIN SECURITY INTERESTS IN A MOTOR VEHICLE; CLARIFYING THAT A CERTIFICATE OF TITLE IS PRIMA FACIE EVIDENCE OF FACTS IN THE TITLE; CLARIFYING REPORTING REQUIREMENTS FOR STOLEN VEHICLES; REVISING THE DEPARTMENT'S AUTHORITY TO DEVELOP AND IMPLEMENT A PILOT

PROGRAM FOR ELECTRONIC CERTIFICATE OF TITLE AND REGISTRATION TRANSACTIONS; CLARIFYING THE REQUIREMENTS TO OBTAIN A TITLE FOR A VEHICLE AND THE EXEMPTIONS FROM TITLING FOR CERTAIN VEHICLES; CLARIFYING WHEN A CERTIFICATE OF TITLE MUST BE CANCELED; INCREASING CERTAIN FEES RELATED TO THE ISSUING OF A TITLE OR THE REGISTRATION OF CERTAIN MOTOR VEHICLES; REVISING THE REQUIREMENTS FOR FURNISHING A BOND IN LIEU OF AN ASSIGNED CERTIFICATE OF TITLE; ALLOWING ISSUANCE OF A CERTIFICATE OF TITLE UNDER CERTAIN CONDITIONS; REVISING THE REQUIREMENTS FOR THE INITIAL REGISTRATION OF AND ANNUAL RENEWAL OF REGISTRATION FOR CERTAIN MOTOR VEHICLES; CLARIFYING THE REGISTRATION REQUIREMENTS FOR VEHICLES ISSUED A CERTIFICATE OF TITLE AND REGISTERED IN ANOTHER JURISDICTION AND USED FOR GAINFUL OCCUPATION IN MONTANA; CLARIFYING THE GRACE PERIOD FOR A CERTIFICATE OF TITLE AND REGISTRATION OF A VEHICLE FOLLOWING A TRANSFER OF OWNERSHIP; CLARIFYING THE REQUIREMENTS FOR A NEW OR USED MOTOR VEHICLE DEALER TO ISSUE A TEMPORARY REGISTRATION PERMIT; CLARIFYING THE LIMITATIONS ON THE TRANSFER OF TEMPORARY REGISTRATION PERMITS FROM DEALER TO DEALER; AMENDING SECTIONS 15-1-116, 15-1-117, 15-1-121, 15-1-122, 23-2-502, 23-2-508, 23-2-513, 23-2-601, 23-2-611, 23-2-614, 23-2-615, 23-2-616, 23-2-619, 23-2-622, 23-2-631, 23-2-634, 23-2-641, 23-2-642, 23-2-644, 23-2-801, 23-2-804, 23-2-814, 23-2-817, 23-2-818, 30-9A-311, 31-1-816, 40-5-248, 61-1-102, 61-1-509, 61-3-101, 61-3-103, 61-3-106, 61-3-107, 61-3-109, 61-3-201, 61-3-202, 61-3-203, 61-3-204, 61-3-205, 61-3-206, 61-3-207, 61-3-208, 61-3-210, 61-3-211, 61-3-212, 61-3-303, 61-3-311, 61-3-312, 61-3-317, 61-3-322, 61-3-342, 61-3-411, 61-3-412, 61-3-456, 61-3-519, 61-3-562, 61-3-603, 61-3-701, 61-4-104, 61-4-111, 61-4-112, 61-4-120, 61-4-121, 61-12-406, 75-10-512, AND 75-10-513, MCA; REPEALING SECTIONS 23-2-509, 23-2-510, 23-2-520, 23-2-612, 23-2-613, 23-2-620, 23-2-810, 23-2-811, 23-2-812, 23-2-813, 61-3-105, 61-3-305, AND 61-3-518, MCA, AND SECTION 4, CHAPTER 90, LAWS OF 1997, SECTION 2, CHAPTER 260, LAWS OF 1999, AND SECTION 9, CHAPTER 394, LAWS OF 2001; AND PROVIDING A DELAYED EFFECTIVE DATE AND APPLICABILITY DATES.

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

**Section 1. Manufacturer's certificate of origin.** "Manufacturer's certificate of origin" means the original paper record produced and issued by or, if in a medium authorized by the department, an electronic record created and transmitted by the manufacturer of a vehicle to the manufacturer's agent or a licensed dealer. The record must establish the origin of the vehicle specifically described in the record and, upon assignment, transfers of ownership of the vehicle to the person or persons named in the certificate.

**Section 2. Registration receipt.** "Registration receipt" means a paper record produced and issued or, if authorized by the department, an electronic record transmitted by the department, its authorized agent, or a county treasurer to the owner of a vehicle that identifies a vehicle, based on information maintained in the electronic record of title for the vehicle, and that provides evidence of the payment of all fees required to be paid for the registration of the vehicle for the registration period indicated in the receipt.

**Section 3. Temporary registration permit.** “Temporary registration permit” means:

(1) a paper record produced and issued by the department, its authorized agent, a county treasurer, or a law enforcement officer to a person to whom ownership of a vehicle was transferred that, when mounted in the left-hand corner of a rear window of a motor vehicle or affixed as prescribed on a motorboat, a sailboat that is 12 feet in length or longer, a snowmobile, or an off-highway vehicle, authorizes the operation of the vehicle for a specified time period prior to registration under 23-2-512, 23-2-616, 23-2-804, or 61-3-303; or

(2) a durable license plate-style placard approved by the department and issued by an authorized agent of the department or a county treasurer to a person to whom ownership of a vehicle has been transferred that, when attached to the rear of the vehicle in a manner prescribed by the department, authorizes the operation of a motor vehicle for a specified time period prior to registration under 61-3-303.

**Section 4. Transaction summary receipt.** “Transaction summary receipt” means an electronic record produced and issued by the department, its authorized agent, or a county treasurer for which a paper receipt is issued. The record may be created by the department and transmitted to the owner of a vehicle, a secured party, or a lienholder. The record must contain a unique transaction record number and summarize and verify the electronic filing of the transaction described in the receipt on the electronic record of title maintained under 61-3-101.

**Section 5. Certificates of title — application — contents — issuance.**

(1) The owner of a vehicle shall apply for a certificate of title on a form prescribed by the department or, if authorized by the department, in an electronic record provided by the department and made available to an authorized agent of the department or a county treasurer.

(2) The application for a certificate of title, upon completion, must include:

(a) the name, residence, and mailing address of the owner and:

(i) if the owner is the holder of a driver’s license or identification card issued by the department or a motor vehicle agency of another jurisdiction, the owner’s driver’s license number or identification card number and the name of the jurisdiction issuing the license or card; or

(ii) if the owner is a corporation, the name of the corporation’s registered agent’s and, if the agent is the holder of a driver’s license or identification card, the agent’s driver’s license number or identification card number and the name of the jurisdiction issuing the license or card;

(b) a description of the vehicle, including, as available and pertinent to the vehicle:

(i) the vehicle make, model, manufacturer’s designated model year of manufacture, vehicle identification number, and type of body and a description of motive power;

(ii) the odometer reading at the time of transfer of ownership;

(iii) the gross vehicle weight rating, gross vehicle weight, or shipping weight, as determined by the manufacturer;

(iv) whether the vehicle was new or used at the time of transfer; and

(v) if the vehicle is a trailer operating intrastate, its declared weight;

(c) the date on which the vehicle was purchased by or was transferred to the applicant, the name and address of the person from whom the vehicle was acquired, and the names and addresses of any secured parties or lienholders for whom the applicant is acknowledging a voluntary security interest;

(d) any other information that the department requires to identify the vehicle and to enable the department to determine whether the owner is entitled to a certificate of title and to determine the existence of security interests in the vehicle;

(e) if applicable, an odometer statement containing the information required in 61-3-206 or, if the title does not contain a space for the information, a separate document approved by the department that provides the same information that is required in 61-3-206; and

(f) a section that gives the applicant the option to direct the department, upon examination and review of the records and completion of the application process, to:

(i) issue a certificate of title as soon as possible; or

(ii) update the electronic record of title for the vehicle, issue a transaction summary receipt, and postpone the issuance of a certificate of a title until the vehicle owner submits a separate request for issuance of the certificate of title.

(3) If the application is for a certificate of title to a new motor vehicle, the application must be accompanied by a manufacturer's certificate of origin, properly assigned to the applicant.

(4) Except as provided in 61-3-208 or subsection (4)(b) of this section, if the application is for a certificate of title to a used motor vehicle, the application must be:

(a) accompanied by a certificate of title that is properly assigned by the prior owner to the applicant; or

(b) acknowledged by the prior owner if the prior owner's interest in the vehicle was assigned to the applicant by means of a transfer on the electronic record of title entered by an authorized agent of the department or a county treasurer.

(5) If the application is for a certificate of title to a camper and if a certificate of title properly assigned by the prior owner is not available, the application must be accompanied by a notarized bill of sale or a conditional sales contract.

(6) If the application is for a certificate of title to a motorboat, a personal watercraft, a sailboat that is 12 feet in length or longer, or a snowmobile and a certificate of title properly assigned by the prior owner is not available, the application must be accompanied by a notarized bill of sale, an invoice, the vehicle's current registration receipt, or a certificate of number showing the transfer of ownership, which may be used to show the transfer of ownership for a motorboat, personal watercraft, or sailboat from the immediate prior owner to the applicant.

**Section 6. Certificate of title — duties — examination of application — records check — incomplete application.** (1) (a) Upon receipt of an application for a certificate of title and any supporting documents, an authorized agent of the department or a county treasurer shall:

(i) review the application and documents;

(ii) complete the records check required in subsection (2); and

(iii) if an authorized agent of the department or the county treasurer is satisfied as to the genuineness and regularity of the application and satisfied that the applicant is entitled to the issuance of a certificate of title, enter the transfer of interest on the electronic record of title.

(b) If an authorized agent of the department or the county treasurer is not satisfied as to the genuineness and regularity of the application or is not satisfied that the applicant is entitled to the issuance of a certificate of title, the authorized agent or the county treasurer may not enter the transfer of interest on the electronic record of title.

(c) If an authorized agent of the department or the county treasurer enters the transfer of interest on the electronic record of title, an authorized agent or the county treasurer shall:

(i) issue a transaction summary receipt to the applicant and, if requested, to any secured party or lienholder with a perfected security interest; and

(ii) as prescribed by the department, forward to the department the application, the assigned certificate of title, and any other documents provided in support of the application.

(2) The department, its authorized agent, or a county treasurer who first receives an application for a certificate of title shall check the vehicle identification number shown on the application against:

(a) the records of vehicles maintained by the department under 61-3-101;

(b) the reported stolen vehicle databases maintained on the state's criminal justice information network and by the national crime information center; and

(c) any other records or databases prescribed by the department.

(3) (a) Upon receipt of an application for a certificate of title and supporting documents that have been processed by an authorized agent of the department or a county treasurer, the department shall review the documents to determine if the application is complete. If the department determines that the application is incomplete, the department shall enter the incomplete status of the application on the electronic record of title for the vehicle and return to the applicant, by first-class mail, the application and all supporting documents. The department shall provide a statement with a specific description of the additional information or documents that must be supplied by the applicant to complete the application process.

(b) Except as provided in 61-3-342, the department may not complete the application process, remove the incomplete status notation on the electronic record of title, or issue a certificate of title until the applicant returns the completed application, including any supporting additional information or documents, to the department.

**Section 7. Certificate of title — issuance — delivery.** (1) Except as provided in subsection (2), if a person who applied for a certificate of title also requested the issuance of the certificate of title as provided in [section 5(2)(f)(i)], upon receipt of the application and all supporting documents and after an examination and determination that the application is complete and regular, the department shall issue a certificate of title of the vehicle and shall mail the certificate of title to the owner.

(2) If a person to whom a vehicle was transferred has not satisfied the titling and registration provisions of this chapter or, if applicable, the registration provisions of Title 23, chapter 2, part 5 or 6, within the 20-day period provided in

[section 9(3)] and the secured party or lienholder pays the title fee required in 61-3-203, the department may mail a certificate of title to the secured party or lienholder upon request of the secured party or lienholder.

(3) (a) A vehicle owner who requested the delayed issuance of a certificate of title under [section 5(2)(f)(ii)], in the initial application for a certificate of title, may submit a request for the issuance of the certificate of title to the department, its authorized agent, or a county treasurer in a manner prescribed by the department. Upon receipt, the department shall issue a certificate of title for the vehicle and mail the certificate of title to the owner.

(b) A title fee may not be demanded from the owner or collected by the department, its authorized agent, or a county treasurer for a certificate of title requested or issued under subsection (3)(a).

**Section 8. Refusal to issue certificate of title.** The department may refuse to issue a certificate of title if any required fee is not paid or if the department has reasonable grounds to believe that:

- (1) the applicant is not the owner of the vehicle;
- (2) the application contains a false or fraudulent statement;
- (3) the applicant failed to furnish any information or document required by the department; or
- (4) based on the check performed under [section 6(2)], the vehicle has been reported as stolen.

**Section 9. Certificate of title — voluntary transfer — timeliness — penalty.** (1) Upon the voluntary transfer of any interest in a motor vehicle for which a certificate of title was issued under the provisions of this chapter, the owner whose interest is to be transferred shall:

- (a) authorize, in writing and on a form prescribed by the department, its authorized agent, or a county treasurer, to enter the transfer of the owner's interest in the vehicle to the transferee on the electronic record of title maintained under 61-3-101; or
- (b) execute a transfer in the appropriate space provided on the certificate of title issued to the owner and deliver the assigned certificate of title to:
  - (i) the transferee at the time of delivery of the vehicle; or
  - (ii) the department, its authorized agent, or a county treasurer if an application for a certificate of title has been completed by the transferee and accompanies the assigned certificate of title.

(2) The transferor's signature on the certificate of title, or the form authorizing transfer of interest upon the electronic record of title, must be acknowledged before the county treasurer, a deputy county treasurer, an elected official authorized to acknowledge signatures, an employee or authorized agent of the department, or a notary public.

(3) Except as provided in sections 23-2-513, 23-2-619, 23-2-818, or 61-4-111, the person to whom an interest in a motor vehicle has been transferred shall:

- (a) execute an application for a certificate of title in the space provided on the assigned certificate of title or as prescribed by the department; and
- (b) within 20 days after the interest in the vehicle was transferred to the person, mail or deliver the assigned certificate of title or application to the



county treasurer of the person's county of residence or, as permitted by the department, its authorized agent.

(4) If the person to whom an interest in a motor vehicle has been transferred fails to submit the application for a certificate of title to the department's authorized agent or a county treasurer within the 20-day grace period described in subsection (3), a late penalty of \$10 must be imposed against the transferee. The penalty must be paid by the transferee to the county treasurer when the application for a certificate of title is finally submitted by the transferee or before the transferee may register the vehicle in this state. The penalty is in addition to the fees otherwise provided by law.

(5) If the transferee does not apply for a certificate of title within the 20-day grace period, a secured party or lienholder of record may pay the fees for the transfer of title and for filing a voluntary security interest or lien. The secured party or lienholder is not liable for the late penalty imposed in subsection (4) or for registration fees, taxes, or fees in lieu of tax on the vehicle.

**Section 10. Involuntary transfer.** (1) (a) An involuntary transfer of title to or any interest in a motor vehicle may occur by operation of law through inheritance, devise, bequest, order in bankruptcy or insolvency, execution sale, or repossession upon default in the performance of the terms of a lease, executory sales contract, or security agreement or in any other manner other than by voluntary act of the person whose title or interest is transferred. Upon the involuntary transfer, the executor, administrator, receiver, trustee, sheriff, secured party, or other representative or successor in interest of the person whose interest is transferred shall send to the department:

(i) an application for a certificate of title; and

(ii) a verified or certified statement of the transfer of interest or a transfer statement, as defined in 30-9A-619.

(b) The statement of transfer of interest must state the reason for the involuntary transfer, the interest transferred, the name of the person to whom the interest is to be transferred, the process or procedure creating the transfer, and other information requested by the department. A transfer statement submitted under this section must meet the requirements of 30-9A-619. Evidence and instruments that are required by law in order to effect a transfer of legal or equitable title to or an interest in chattels must be submitted with the statement.

(c) Except as provided in subsection (2), if the department determines that the transfer is regular and that all legal requirements have been complied with, the department shall send notice of the intended transfer to the owner, conditional sales vendor, lessor, mortgagee, and other lienholder, as shown in the department's records. Deposit in the U.S. mail of the notice, postage prepaid, addressed to the person at the respective address shown in the department's records satisfies the notice required by this section. Not less than 5 days after sending the notice, the department shall issue a new certificate of title to the transferee.

(2) (a) Except as provided in subsection (2)(b), if an interest in a vehicle that is not registered in this state is involuntarily transferred to a person in this state, the person to whom the interest is transferred shall follow the procedure provided in subsection (1).

(b) In lieu of the statement required in subsection (1), the department may accept an affidavit of repossession as executed by the person seeking the involuntary transfer.

(3) The department is not required to send notice for a transfer of interest occurring under subsection (2).

**Section 11. Surviving spouse or heir — small estates.** (1) Subject to the limitations of Title 72, chapter 3, part 11, the surviving spouse or other heir may secure transfer of a decedent's ownership interests in one or more motor vehicles for which a certificate of title was issued under this chapter if:

(a) the combined value of the interests does not exceed \$20,000;

(b) the decedent did not leave other property that requires the procuring of letters of administration or letters testamentary; and

(c) the decedent did not by execution of a will otherwise bequeath the property.

(2) The person seeking transfer of the decedent's interests under this section shall file an affidavit with the department setting forth the fact of survivorship, the name and address of any other heirs, and any other facts determined necessary to entitle the person to the transfer.

(3) If the department determines that the transfer is regular and that all legal requirements have been met, the department shall issue a certificate of title, subject to any security interests shown by the department's records, to the surviving spouse or other heir.

**Section 12. Salvage vehicles.** (1) A salvage vehicle for which a certificate of title is sought must be inspected for the vehicle identification number to authenticate the identity of the vehicle before an electronic record of title can be created or a certificate of title can be issued. The inspection does not attest to the roadworthiness or safety condition of the vehicle and must be performed by an authorized employee or an authorized agent of the department or by a peace officer designated by the department.

(2) The department may contract with a person or entity for use of a facility as a regional inspection site for salvage vehicles.

(3) The department shall collect an inspection fee of \$18.50 from the person requesting the inspection for each salvage vehicle inspected. The fees collected under this section must be distributed as follows:

(a) \$5 must be deposited in the state general fund; and

(b) \$13.50 must be deposited in an account in the state special revenue fund to be appropriated only for the inspection of salvage vehicles.

(4) (a) A person authorized to inspect salvage vehicles may seize and hold a vehicle:

(i) if the person has probable cause to believe that the vehicle has been stolen;

(ii) on which a motor number or vehicle identification number has been defaced, altered, removed, covered, destroyed, or obliterated; or

(iii) that has a vehicle identification number that does not conform with the vehicle identification number on the certificate of title.

(b) A seized vehicle must be held until the identity of the vehicle is established and arrangements are made for its lawful disposition. A person

authorized to inspect salvage vehicles may use any means necessary to identify a vehicle by its vehicle identification number or numbers.

(5) The department may not create an electronic record of title or issue a certificate of title for a salvage vehicle until the identity of the vehicle is established.

(6) The department may adopt rules for the inspection of salvage vehicles.

**Section 13. Temporary registration permit.** (1) A county treasurer or a law enforcement officer may issue a temporary registration permit under the provisions of 61-3-317. A county treasurer may also issue a temporary registration permit under the provisions of 61-3-342.

(2) An employee or agent of the department may issue a temporary registration permit only under express authorization from the department and in accordance with the provisions of this chapter.

(3) A dealer licensed under Title 23, chapter 2, part 5, 6, or 8, or under Title 61, chapter 4, part 1, may issue a temporary registration permit only as authorized under 23-2-513, 23-2-619, 23-2-818, 61-4-111, or 61-4-112.

(4) A temporary registration permit issued under subsections (1) through (3) must contain the following information:

(a) a temporary registration permit control number, registration receipt number, or transaction record number, as prescribed by the department;

(b) the expiration date of the temporary registration permit; and

(c) if required by the department, a description of the vehicle, including year, make, model, and vehicle identification number, the name and address of the person from whom ownership of the vehicle was transferred, the name and residence address of the person to whom ownership of the vehicle has been transferred, and the date of transfer.

**Section 14.** Section 15-1-116, MCA, is amended to read:

**“15-1-116. Manufactured home considered as improvement to real property — requirements.** (1) A manufactured home will be considered for tax purposes an improvement to real property if:

(a) the running gear is removed; and

(b) the manufactured home is attached to a permanent foundation on land that is owned or being purchased by the owner of the manufactured home or, if the land is owned by another person, with the permission of the landowner.

(2) To eliminate ~~the a manufacturer's certificate of origin properly assigned to an owner or a certificate of ownership title~~ of a manufactured home, an owner may file a statement of intent on a form furnished by the department of justice.

(3) The statement of intent must include:

(a) the serial number of the manufactured home;

(b) the legal description of the real property to which the manufactured home has been permanently attached;

(c) a description of any security interests in the manufactured home; and

(d) approval from all lienholders of the intent to eliminate the *certificate of title*.

(4) (a) The owner shall present the statement of intent to the county treasurer of the county in which the manufactured home is located and shall

surrender the certificate of ~~ownership title~~. Upon receipt of a titling fee of \$5 payment of the fee required in 61-3-203, the county treasurer shall:

- (i) ~~enter the transfer of interest on the electronic record of title;~~
  - (ii) issue the owner a duplicate receipt for the surrendered certificate a transaction summary receipt; and
  - (iii) forward a copy of the statement of intent, ~~the original receipt,~~ and the surrendered certificate of title to the department of justice.
- (b) The county treasurer may not issue the receipt unless all taxes, interest, and penalties on the manufactured home have been paid in full. The county treasurer shall remit the titling fee to the department for deposit in the state general fund.

(5) Upon the recording of the statement of intent and the receipt of surrender, the manufactured home may not be physically removed without the consent of all persons who have an interest in the manufactured home.

(6) A manufactured home that has been declared an improvement to real property in accordance with this section must be treated by the department and by lending institutions in the same manner as any other residence that is classified as an improvement.”

**Section 15.** Section 15-1-117, MCA, is amended to read:

**“15-1-117. Reversal of declaration — exception.** (1) Before a manufactured home can be physically removed from its location, the owner shall obtain a search of the title to the land from a title insurance company in order to identify those persons or entities whose consent for removal must be obtained. The owner shall obtain permission in writing from the affected persons or entities before removing the manufactured home from its location.

(2) At least 30 days before the manufactured home is removed, the owner shall give written notice to the department and the county treasurer in which the home is currently located; of the intended removal of the home. The written notice must include the written consents of the affected persons or entities identified in subsection (1). The owner may not remove the home until the written consents are received and all of the taxes that have been assessed have been paid in full to the county treasurer.

(3) Within 5 days of the removal of the home, the purchaser shall make a declaration of reversal and apply for a certificate of ~~ownership title~~ for the manufactured home from the department of justice in accordance with the provisions of Title 61, chapter 3, part 2.”

**Section 16.** Section 15-1-121, MCA, is amended to read:

**“15-1-121. Entitlement share payment — appropriation.** (1) The amount calculated pursuant to this subsection is each local government's base entitlement share. The department shall estimate the total amount of revenue that each local government received from the following sources for the fiscal year ending June 30, 2001:

- (a) personal property tax reimbursements pursuant to sections 167(1) through (5) and 169(6), Chapter 584, Laws of 1999;
- (b) vehicle and boat 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) 25-1-1103;
    - (iv) 25-9-506;
    - (v) 25-9-804; and
    - (vi) 27-9-103;
  - (e) certificate of ownership title fees for manufactured homes pursuant to 15-1-116;
  - (f) financial institution taxes pursuant to Title 15, chapter 31, part 7;
  - (g) coal severance taxes allocated for county land planning pursuant to 15-35-108;
  - (h) all beer, liquor, and wine taxes pursuant to:
    - (i) 16-1-404;
    - (ii) 16-1-406; and
    - (iii) 16-1-411;
  - (i) late filing fees pursuant to ~~61-3-201~~ [section 9];
  - (j) title and registration fees pursuant to 61-3-203;
  - (k) disabled veterans' flat license plate fees and purple heart license plate fees pursuant to 61-3-332;
  - (l) county personalized license plate fees pursuant to 61-3-406;
  - (m) special mobile equipment fees pursuant to 61-3-431;
  - (n) single movement permit fees pursuant to 61-4-310;
  - (o) state aeronautics fees pursuant to 67-3-101; and
  - (p) department of natural resources and conservation payments in lieu of taxes pursuant to Title 77, chapter 1, part 5.
- (2) (a) From the amounts estimated in subsection (1) for each county government, the department shall deduct fiscal year 2001 county government expenditures for district courts, less reimbursements for district court expenses,

and fiscal year 2001 county government expenditures for public welfare programs to be assumed by the state in fiscal year 2002.

(b) The amount estimated pursuant to subsections (1) and (2)(a) is each local government's base year component. The sum of all local governments' base year components is the base year entitlement share pool. For the purpose of calculating the sum of all local governments' base year components, the base year component for a local government may not be less than zero.

(3) (a) Beginning with fiscal year 2002 and in each succeeding fiscal year, the base year entitlement share pool must be increased annually by a growth rate as provided for in this subsection (3). The amount determined through the application of annual growth rates is the entitlement share pool for each fiscal year. For fiscal year 2002, the growth rate is 3%. For fiscal year 2003, the growth rate is 3% for incorporated cities and towns, 1.61% for counties, and 2.3% for consolidated local governments. Beginning with calendar year 2004, by October 1 of each even-numbered year, the department shall calculate the growth rate of the entitlement share pool for each year of the next biennium in the following manner:

(i) Before applying the growth rate for fiscal year 2004 to determine the fiscal year 2004 entitlement share pool, the department shall add to the fiscal year 2003 entitlement share pool the fiscal year 2003 amount of revenue actually distributed to the county from the 25-cent marriage license fee in 50-15-301 and the probation and parole fee in 46-23-1031(2)(b).

(ii) The department shall calculate the average annual growth rate of the Montana gross state product, as published by the bureau of economic analysis of the United States department of commerce, for the following periods:

(A) the last 4 calendar years for which the information has been published; and

(B) the 4 calendar years beginning with the year before the first year in the period referred to in subsection (3)(a)(ii)(A).

(iii) The department shall calculate the average annual growth rate of Montana personal income, as published by the bureau of economic analysis of the United States department of commerce, for the following periods:

(A) the last 4 calendar years for which the information has been published; and

(B) the 4 calendar years beginning with the year before the first year in the period referred to in subsection (3)(a)(iii)(A).

(b) (i) For fiscal year 2004 and subsequent fiscal years, the entitlement share pool growth rate for the first year of the biennium must be the following percentage of the average of the growth rates calculated in subsections (3)(a)(ii)(B) and (3)(a)(iii)(B):

(A) for counties, 54%;

(B) for consolidated local governments, 62%; and

(C) for incorporated cities and towns, 70%.

(ii) The entitlement share pool growth rate for the second year of the biennium must be the following percentage of the average of the growth rates calculated in subsections (3)(a)(ii)(A) and (3)(a)(iii)(A):

(A) for counties, 54%;

(B) for consolidated local governments, 62%; and

(C) for incorporated cities and towns, 70%.

(4) 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 (6). For purposes of calculating the base year component for a county or consolidated local government, the department shall include the revenue listed in subsection (1) for all special districts within the county or consolidated local government. 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 listed in subsection (1).

(5) (a) The entitlement share pools calculated in this section and the block grants provided for in subsection (6) are statutorily appropriated, as provided in 17-7-502, from the general fund to the department for distribution to local governments. Each local government is entitled to a pro rata share of each year's entitlement share pool based on the local government's base component in relation to the base year entitlement share pool. The distributions must be made on a quarterly basis beginning September 15, 2001.

(b) (i) For fiscal year 2002, the growth amount is the difference between the fiscal year 2002 entitlement share pool and the base year entitlement share pool. For fiscal year 2002, a county may have a negative base year component. For fiscal year 2003 and each succeeding fiscal year, 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. For the purposes of subsection (5)(b)(ii)(A), a county with a negative base year component has a base year component of zero. 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 base 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 base 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 base 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 not represented by the growth amount is distributed to each local government in the same manner as the entitlement share pool was distributed in the prior fiscal year.

(vi) For fiscal year 2002, an amount equal to the district court costs identified in subsection (2) must be added to each county government's distribution from the entitlement share pool.

(vii) For fiscal year 2002, an amount equal to the district court fees identified in subsection (1)(d) must be subtracted from each county government's distribution from the entitlement share pool.

(6) (a) 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 block grant. If a tax increment financing district referred to in subsection (6)(b) terminates, then the block grant provided for in subsection (6)(b) terminates.

(b) One-half of the payments provided for in this subsection (6)(b) must be made by November 30 and the other half by May 31 of each year. Subject to subsection (6)(a), the entitlement share for tax increment financing districts is as follows:

Cascade	Great Falls - downtown	\$468,966
Deer Lodge	TIF District 1	3,148
Deer Lodge	TIF District 2	3,126
Flathead	Kalispell - District 1	758,359
Flathead	Kalispell - District 2	5,153
Flathead	Kalispell - District 3	41,368
Flathead	Whitefish District	164,660
Gallatin	Bozeman - downtown	34,620
Lewis and Clark	Helena - #2	731,614
Missoula	Missoula - 1-1B & 1-1C	1,100,507
Missoula	Missoula - 4-1C	33,343
Silver Bow	Butte - uptown	283,801
Yellowstone	Billings	436,815



(c) The entitlement share for industrial tax increment financing districts is as follows:

(i) for fiscal years 2002 and 2003:

Missoula County	Airport Industrial	\$4,812
Silver Bow	Ramsay Industrial	597,594;

(ii) for fiscal years 2004 and 2005:

Missoula	County Airport Industrial	\$2,406
Silver Bow	Ramsay Industrial	298,797; and

(iii) \$0 for all succeeding fiscal years.

(d) The entitlement share for industrial tax increment financing districts referred to in subsection (6)(c) may not be used to pay debt service on tax increment bonds to the extent that the bonds are secured by a guaranty, a letter of credit, or a similar arrangement provided by or on behalf of an owner of property within the tax increment financing industrial district.

(e) One-half of the payments provided for in subsection (6)(c) must be made by July 30, and the other half must be made in December of each year.

(7) The estimated base year entitlement share pool and any subsequent entitlement share pool for local governments do not include revenue received from countywide transportation block grants or from countywide retirement block grants.

(8) The estimates for the base year entitlement share pool in subsection (1) must be calculated as if the fees in Chapter 515, Laws of 1999, were in effect for all of fiscal year 2001.

(9) (a) If revenue that is included in the sources listed in subsections (1)(b) through (1)(p) is significantly reduced, except through legislative action, the department shall deduct the amount of revenue loss from the entitlement share pool beginning in the succeeding fiscal year and the department shall work with local governments to propose legislation to adjust the entitlement share pool to reflect an allocation of the loss of revenue.

(b) For the purposes of subsection (9)(a), a significant reduction is a loss that causes the amount of revenue received in the current year to be less than 95% of the amount of revenue received in the base year.

(10) A three-fifths vote of each house is required to reduce the amount of the entitlement share calculated pursuant to subsections (1) through (3).

(11) 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.

(12) A local government may appeal the department's estimation of the base year component, the entitlement share pool growth rate, or a local government's allocation of the entitlement share pool, according to the uniform dispute review procedure in 15-1-211."

**Section 17.** Section 15-1-122, MCA, is amended to read:

**"15-1-122. Fund transfers.** (1) There is transferred from the state general fund to the adoption services account, provided for in 42-2-105, \$36,764 for fiscal

year 2003. Beginning with fiscal year 2004, the amount of the transfer must be increased by 10% in each succeeding fiscal year.

(2) There is transferred from the state general fund to the department of transportation state special revenue nonrestricted account the following amounts:

(a) \$75,000 in fiscal year 2003;

(b) \$2,960,715 in fiscal year 2004; and

(c) in each succeeding fiscal year, the amount in subsection (2)(b), increased by 1.5% in each succeeding fiscal year.

(3) For fiscal year 2002 and for each succeeding fiscal year, there is transferred from the state general fund to the accounts, entities, or recipients indicated the following amounts:

(a) to the motor vehicle recycling and disposal program provided for in Title 75, chapter 10, part 5:

(i) \$2 for each new application for a motor vehicle title and for each transfer of a motor vehicle title for which a fee is paid pursuant to 61-3-203; and

(ii) \$1 for each passenger car or truck under 8,001 pounds GVW registered for licensing pursuant to Title 61, chapter 3, part 3. Fifteen cents of each dollar must be used for the purpose of reimbursing the hired removal of abandoned vehicles during the calendar year following the calendar year in which the fee was paid. Any portion of the 15 cents not used for abandoned vehicle removal reimbursement during the calendar year following its payment must be used as provided in 75-10-532;

(b) to the noxious weed state special revenue account provided for in 80-7-816:

(i) \$1 for each off-highway vehicle subject to payment of the fee in lieu of tax, as provided for in 23-2-803; and

(ii) \$1.50 for each light vehicle, truck or bus weighing less than 1 ton, logging truck, vehicles weighing more than 1 ton, motorcycle, quadricycle, and motor home subject to registration or reregistration pursuant to 61-3-321;

(c) to the department of fish, wildlife, and parks:

(i) \$2.50 for each motorboat, sailboat, or personal watercraft receiving a certificate of number under 23-2-512, with 20% of the amount received to be used to acquire and maintain pumpout equipment and other boat facilities;

(ii) \$5 for each snowmobile registered under 23-2-616, with \$2.50 to be used for enforcing the purposes of 23-2-601 through 23-2-602, 23-2-611, 23-2-614, 23-2-615, 23-2-616 through 23-2-619, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 and \$2.50 designated for use in the development, maintenance, and operation of snowmobile facilities;

(iii) \$1 for each duplicate snowmobile decal issued under 23-2-617;

(iv) \$5 for each off-highway vehicle decal issued under 23-2-804 and each off-highway vehicle duplicate decal issued under 23-2-809, with 40% of the money used to enforce the provisions of 23-2-804 and 60% of the money used to develop and implement a comprehensive program and to plan appropriate off-highway vehicle recreational use;

(v) to the state special revenue fund established in 23-1-105, \$3.50 for each recreational vehicle, camper, motor home, and travel trailer registered or reregistered and subject to the fee in 61-3-321 or 61-3-524; and

(vi) an amount equal to 20% of the funds collected pursuant to 23-2-518 to be deposited in the motorboat account to be used as provided in 23-2-533;

(d) to the state veterans' cemetery account, provided for in 10-2-603, \$10 for each veteran's license plate issued pursuant to 61-3-332(10)(a)(ii), (10)(f), and (10)(h);

(e) to the supplemental benefits for highway patrol officers' retirement account provided for in 19-6-709, 25 cents for each motor vehicle registered, other than trailers or semitrailers registered in other jurisdictions and registered through a proportional registration agreement; and

(f) 25 cents a year for each vehicle subject to the fee in 61-3-321(6) for deposit in the state special revenue fund to the credit of the senior citizens and persons with disabilities transportation services account provided for in 7-14-112.

(4) For fiscal year 2002, there is transferred from the state general fund to the state special revenue fund to be used for purposes of state funding of district court expenses, as provided in 3-5-901, \$5,742,983 in lieu of the amount deposited by the state treasurer under 61-3-509(3), as that subsection read prior to the amendment of 61-3-509 in 2001.

(5) For each fiscal year, beginning with fiscal year 2002, the department of justice shall provide to the department of revenue a count of the vehicles required for the calculations in subsection (3). Transfer amounts for fiscal year 2002 must be based on vehicle counts for calendar year 2000. Transfer amounts in each succeeding fiscal year must be based on vehicle counts in the most recent calendar year for which vehicle information is available.

(6) The amounts transferred from the general fund to the designated recipient must be appropriated as state special revenue in the general appropriations act for the designated purposes."

**Section 18.** Section 23-2-502, MCA, is amended to read:

**"23-2-502. Definitions.** As used in this part, unless the context clearly requires a different meaning, the following definitions apply:

(1) "Certificate of number" means the certificate issued annually by the county treasurer to the owner of a motorboat or by the department of justice to dealers or manufacturers, assigning ~~such~~ *the* motorboat an identifying number and containing ~~such~~ information as required.

~~(2) "Certificate of ownership" means a certificate issued by the department of justice identifying the owner of a motorboat or sailboat 12 feet in length or longer.~~

~~(3)~~(2) "Dealer" means ~~any~~ a person who engages in whole or in part in the business of buying, selling, or exchanging new and unused vessels or used vessels, or both, either outright or on conditional sale, bailment, lease, chattel mortgage, or otherwise, and who has an established place of business for sale, trade, and display of vessels. A yacht broker is a dealer.

~~(4)~~(3) "Department" means the department of fish, wildlife, and parks of the state of Montana.

~~(5)~~(4) "Documented vessel" means a vessel ~~which~~ *that* has and is required to have a valid marine document as a vessel of the United States.

~~(6)~~(5) "Identifying number" means the boat number set forth in the certificate of number and properly displayed on the motorboat.

~~(7)~~(6) "License decals" means the serially numbered license stickers issued annually by the county treasurer and displayed as required by law.

~~(8)~~(7) "Lienholder" means a person holding a security interest.

~~(9)~~(8) "Manufacturer" means ~~any~~ a person engaged in the business of manufacturing or importing new and unused vessels or new and unused outboard motors for the purpose of sale or trade.

~~(10)~~(9) "Motorboat" means ~~any~~ a vessel, including a canoe, kayak, personal watercraft, rubber raft, or pontoon, propelled by any machinery, motor, or engine of any description, whether or not ~~such~~ *the* machinery, motor, or engine is the principal source of propulsion. The term includes boats temporarily equipped with detachable motors or engines but does not include a vessel ~~which~~ *that* has a valid marine document issued by the U.S. coast guard of the United States government or any ~~successor~~ federal agency ~~successor thereto~~.

~~(11)~~(10) "Operate" means to navigate or otherwise use a motorboat or a vessel.

~~(12)~~(11) "Operator" means the person who navigates, drives, or is otherwise in immediate control of a motorboat or vessel.

~~(13)~~(12) "Owner" means a person, other than a lienholder, having the property in or title to a motorboat or vessel. The term includes a person entitled to the use or possession of a motorboat or vessel subject to an interest in another person, reserved or created by an agreement securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security.

~~(14)~~(13) "Passenger" means ~~every~~ *each* person carried on board a vessel other than:

(a) the owner or ~~his~~ *the owner's* representative;

(b) the operator;

(c) bona fide members of the crew engaged in the business of the vessel who have *not* contributed ~~no~~ consideration for their carriage and who are paid for their services; or

(d) any guest on board a vessel ~~which~~ *that* is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for ~~his~~ carriage.

~~(15)~~(14) "Person" means an individual, partnership, firm, corporation, association, or other entity.

~~(16)~~(15) "Personal watercraft" means a vessel that uses an outboard motor or an inboard engine powering a water jet pump as its primary source of propulsion and that is designed to be operated by a person sitting, standing, or kneeling on the vessel rather than by the conventional method of sitting or standing in the vessel.

~~(17)~~(16) (a) "Sailboat" means a vessel that uses a sail and wind as its primary source of propulsion.

(b) The term does not include a canoe or kayak propelled by wind.

~~(18)~~ (17) "Security interest" means an interest that is reserved or created by an agreement that secures payment or performance of an obligation and is valid against third parties generally.

~~(19)~~ (18) "Uniform state waterway marking system" means one of two categories:

(a) a system of aids to navigation to supplement the federal system of marking in state waters;

(b) a system of regulatory markers to warn a vessel operator of dangers or to provide general information and directions.

~~(20)~~ (19) "Vessel" means every description of watercraft, unless otherwise defined by the department, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

~~(21)~~ (20) "Waters of this state" means any waters within the territorial limits of this state."

**Section 19.** Section 23-2-508, MCA, is amended to read:

**~~"23-2-508. Certificate of ownership—filing of security interests title.~~** (1) Except as provided in subsection ~~(9)~~ (3), a motorboat or sailboat 12 feet in length or longer may not be operated upon the waters of the state unless a certificate of ~~ownership title~~ has first been obtained from the department of justice in accordance with the laws of this state.

(2) ~~The owner of~~ *Unless expressly exempted, the provisions of Title 61, chapter 3, parts 1 and 2, apply to a motorboat or sailboat 12 feet in length or longer shall apply for a certificate of ownership and a certificate of number with the county treasurer of the county in which the owner resides, upon forms furnished by the department of justice. The forms must require the following information:*

- ~~(a) name of the owner;~~
- ~~(b) residence of the owner, by town or county;~~
- ~~(c) business or home address of the owner;~~
- ~~(d) name and address of any lienholder;~~
- ~~(e) amount due under any contract or lien;~~
- ~~(f) name of the manufacturer;~~
- ~~(g) model number or name;~~
- ~~(h) identification number;~~
- ~~(i) name and address of the dealer or other person from whom acquired, if known; and~~
- ~~(j) other information that the department of justice may require.~~

~~(3) The application is to be accompanied by documentation of ownership, such as an invoice, a bill of sale, a foreign title, an official certificate of boat number, a fee in lieu of tax receipt, or a certificate of ownership of a trailer purchased with the motorboat or sailboat. An applicant who fails to provide proof of ownership shall provide a certified statement describing how the motorboat or sailboat 12 feet in length or longer was acquired, from whom acquired, if known, and other information requested by the department of justice.~~

~~(4) If a certificate of ownership has previously been issued under the provisions of this part, the application for a new certificate must be accompanied by the immediately previous certificate. This subsection does not apply to motorboats or sailboats 12 feet in length or longer that are purchased as new and unused vessels or that were operated when the provisions of this part were not in force and effect.~~

~~(5) A motorboat or sailboat 12 feet in length or longer that does not have a manufacturer's or other identifying number on the motorboat or sailboat must be assigned an identification number by the department. A fee of \$1 must be paid to the department for an assignment of number.~~

~~(6) Upon completion of the application, the county treasurer shall issue to the applicant two copies of the certificate of number application, one of which must be marked "file copy". The treasurer shall forward one copy and the original application for a certificate of ownership to the department of justice, which shall enter the information contained in the application upon the corresponding records of its office and shall furnish the applicant a certificate of ownership containing that information in the application considered necessary by the department and a permanent boat number. The certificate of ownership need not be renewed annually and is valid as long as the person holding it owns the vessel.~~

~~(7) The owner shall at all times retain possession of the certificate of ownership, except when it is being transmitted to and from the department of justice for endorsement or cancellation.~~

~~(8) Upon application for a certificate of ownership, a fee of \$5 must be paid to the county treasurer, which must be forwarded by the county treasurer to the department of justice and deposited in the general fund.~~

~~(9)(3) A person who, on July 1, 1988, is the owner of a *has owned the same* motorboat or sailboat 12 feet in length or longer *since July 1, 1988*, with a valid certificate of number issued by the state is not required to file an application for a certificate of ~~ownership~~ *title* for the motorboat or sailboat unless the person transfers a part of the person's interest in the motorboat or sailboat or renews the certificate of number for the motorboat or sailboat.~~

~~(10) The department of justice may not file a voluntary security interest or lien unless it is accompanied by or specified in the application for a certificate of ownership of the boat encumbered. If the approved lien notice is transmitted to the department of justice, the security agreement or other lien instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, the complete boat description, the amount of the lien, and the signature of the debtor. The department of justice shall file voluntary security interests and liens by entering the name and address of the secured party upon the face of the certificate of ownership. Involuntary liens must be filed against the record of the boat encumbered. The department of justice shall mail a statement certifying the filing of a security interest or lien to the secured party. The department of justice shall mail the certificate of ownership to the owner at the address given on the certificate; however, if the transfer of ownership and filing of the security interest are paid for by a creditor or secured party, the department of justice shall return the certificate of ownership to the county treasurer of the county in which the boat is to be registered. The owner of a boat is the person entitled to operate and possess the boat.~~

~~(11) A security interest in a boat held as inventory by a dealer must be perfected in accordance with Title 30, chapter 9A.~~

~~(12) Whenever a security interest or lien is filed against a boat that is subject to two security interests previously perfected under this section, the department of justice shall endorse on the face of the certificate of ownership: "NOTICE. This boat is subject to additional security interest on file with the Department of Justice." No other information regarding the additional security interests need be endorsed on the certificate.~~

~~(13) Satisfaction or statements of release filed with the department of justice under this part must be retained for a period of 8 years after receipt, after which they may be destroyed.~~

~~(14) Except as provided in subsection (15), a voluntary security interest or lien is perfected on the date the lien notice is delivered to the county treasurer. On that date, the county treasurer shall issue to the secured party a receipt evidencing the perfection. Perfection under this section constitutes constructive notice to subsequent purchasers or encumbrancers, from the date of delivery of the lien notice to the county treasurer, of the existence of the security interest.~~

~~(15) Voluntary security interests or lien filings that do not require transfer of ownership are perfected on the date the lien notice and the certificate of ownership or manufacturer's statement of origin are received by the department of justice. On that date, the department of justice shall issue to the secured party a receipt evidencing the perfection. Perfection under this subsection constitutes constructive notice to subsequent purchasers or encumbrancers, from the date the lien notice is delivered to the department of justice, of the existence of the security interest.~~

~~(16) Upon default under a chattel mortgage or conditional sales contract covering a boat, the mortgagee or vendor has the same remedies as in the case of other personal property. In case of attachment of a boat, all the provisions of 27-18-413, 27-18-414, and 27-18-804 are applicable, except that deposits must be made with the department of justice.~~

~~(17) A conditional sales vendor or chattel mortgagee or assignee who fails to file a satisfaction of a chattel mortgage, assignment, or conditional sales contract within 15 days after receiving final payment is required to pay the department of justice the sum of \$1 for each day that the person fails to file the satisfaction.~~

~~(18) Upon receipt of notice of any involuntary liens or attachments against the record of any boat registered in this state, the department of justice shall within 24 hours mail to the owner, conditional sales vendor, mortgagee, or their assignee a notice showing the name and address of the lien claimant, the amount of the lien, the date of execution of the lien, and, in the case of attachment, the full title of the court, the action, and the name of the attorney for the plaintiff or the name of the attaching creditor, or both.~~

~~(19) It is not necessary to refile with the department of justice any instruments on file in the office of the county clerk and recorder on October 1, 1989.~~

~~(20) A fee of \$4 must be paid to the department of justice to file any security interest or other lien against a boat. The \$4 fee must cover the cost of filing a satisfaction or release of the security interest and the cost of entering the satisfaction or release on the records of the department of justice and deleting the endorsement of the security interest from the face of the certificate of~~

ownership. A fee of \$4 must be paid to the department of justice for issuing a certified copy of a certificate of ownership subject to a security interest or other lien on file with the department of justice or for filing an assignment of any security interest or other lien on file with the department of justice. All fees provided for in this section must be paid to the county treasurer for deposit in the state general fund in accordance with 15-1-504.”

**Section 20.** Section 23-2-513, MCA, is amended to read:

**“23-2-513. Dealer’s identification number — premises — inspection — bond — judgment — temporary registration permit.** (1) A dealer or manufacturer may apply directly to the department of justice for one identifying number and one or more certificates of number. A dealer’s or manufacturer’s identifying number ~~shall~~ *must* be displayed on ~~his~~ a boat while the boat is operating for a purpose related to the buying, selling, or exchanging of the boat by the dealer or manufacturer.

(2) The application for a dealer’s or manufacturer’s identifying number must include ~~his~~ *the dealer’s or manufacturer’s* name and business address. Each dealer or manufacturer ~~will~~ *must* have one identifying number assigned to ~~his~~ *the* business.

(3) An application for dealer’s or manufacturer’s identifying number and certificate of number must be accompanied by the following fees:

(a) for the identifying number, first certificate of number, and set of license decals, \$5;

(b) for each additional certificate of number and set of license decals applied for in any application, \$2.

(4) The department of justice shall issue certificates of number for the identifying numbers assigned to a dealer or manufacturer in the same manner as provided in 23-2-512(1) and (9), ~~as amended~~, except that ~~no~~ a boat may *not* be described in the certificate and each certificate must state that the identifying number has been assigned to a dealer or manufacturer. A dealer’s or manufacturer’s certificate of number expires on December 31 of the year for which it is issued.

(5) A dealer’s or manufacturer’s identifying number ~~shall~~ *must* be displayed in the same manner as provided in 23-2-512(9), ~~as amended~~, except that the number may be temporarily attached. The last three letters ~~shall~~ *must* be “DLR” for dealer and “MFR” for manufacturer. These letters ~~shall~~ *must* be included, respectively, in dealer or manufacturer identification numbers only.

(6) ~~No~~ A person other than a dealer or manufacturer or an employee of a dealer or manufacturer may *not* display or use a dealer’s or manufacturer’s identifying number. A dealer’s or manufacturer’s identifying number may be displayed only on motorboats owned by the dealer or manufacturer.

(7) ~~No~~ A dealer or manufacturer or *an* employee of a dealer or manufacturer may *not* use a dealer’s or manufacturer’s identifying number for any purpose other than the purpose described in subsection (1) ~~of this section~~.

(8) A dealer shall maintain a principal place of business, coinciding with the business address listed on the application, where ~~he maintains~~ all business records *are maintained* and where ~~he the dealer~~ displays, sells, and services merchandise. The dealer shall display a sign at the place of business that clearly states the name of the business. The premises of the dealer’s principal place of



business must be inspected by an official of the department of justice to ~~assure~~ ensure compliance with this section.

(9) In order to qualify for renewal of a boat dealer's license, the dealer shall certify to the department of justice, upon application for renewal, that ~~he the~~ dealer sold five or more boats during the previous license year. If five or more boats were not sold, an additional fee of \$50 is required for renewal of the dealer's license.

(10) (a) The applicant for a boat dealer's license shall file with ~~his the~~ application a bond of \$5,000. The bond must be conditioned that the applicant shall conduct ~~his the~~ business in accordance with the requirements of the law. All bonds must run to the state of Montana, must be approved by the department of justice and filed in its office, and must be renewed annually.

(b) A person who suffers loss or damage ~~due to~~ because of the unlawful conduct of a dealer licensed under this section shall obtain a judgment from a court of competent jurisdiction prior to collecting on the bond. The judgment must determine a specific loss or damage amount and conclude that the licensee's unlawful operation caused the loss or damage before payment on the bond is required.

*(11) Prior to the delivery of a motorboat or a sailboat 12 feet in length or longer to a purchaser, the dealer shall issue and affix to a motorboat or a sailboat constructed after October 31, 1972, a temporary registration permit, as defined in [section 3]. The temporary registration permit expires 30 days after the date of issuance. The dealer shall keep a copy of the temporary registration permit for the dealer's records and shall send a copy of the temporary registration permit to the department of justice.*

**Section 21.** Section 23-2-601, MCA, is amended to read:

**"23-2-601. Definition of terms.** As used in 23-2-601 ~~through~~, 23-2-602, 23-2-611, 23-2-614, 23-2-615, 23-2-616 through 23-2-619, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644, ~~the following terms shall have the meanings indicated herein, unless the context requires otherwise, clearly requires that another meaning is intended the following definitions apply:~~

(1) "Certificate of ~~ownership~~ title" means the document issued by the department of justice as prima facie evidence of ownership.

(2) "Certificate of registration" means the owner's receipt evidencing payment of taxes, decal fees, and registration fees for ~~given~~ registration year.

(3) "dbA" means sound pressure level measured on the "A" weight scale in decibels.

(4) "Department" means the department of fish, wildlife, and parks of the state of Montana.

(5) "New snowmobile" means any snowmobile that has not been previously sold to an owner, ~~as defined in subsection (7).~~

(6) "Operator" includes ~~every~~ each person who operates or is in actual physical control of the operation of a snowmobile.

(7) "Owner" includes ~~every~~ each person ~~as defined herein~~, other than a lienholder or ~~other~~ person having a security interest ~~only in a snowmobile, holding that holds~~ a certificate of ownership title to a snowmobile and is entitled to the use or possession ~~thereof~~ of the snowmobile.

(8) "Person" includes an individual, partnership, association, corporation, and any other body or group of persons, ~~whether incorporated or not and~~ regardless of the degree of formal organization.

(9) "Roadway" includes only those portions of any highway, road, or street improved, designed, or ordinarily used for travel or parking of motor vehicles.

(10) "Snowmobile" includes any self-propelled vehicle of an overall width of 48 inches or less, excluding accessories, designed primarily for travel on snow or ice, ~~which that~~ may be steered by skis or runners and ~~which that~~ is not otherwise registered or licensed under the laws of the state of Montana."

**Section 22.** Section 23-2-611, MCA, is amended to read:

**~~"23-2-611. Certificate of ownership title — filing of security interests.~~** (1) A snowmobile may not be operated upon any private or public lands, trails, easements, lakes, rivers, streams, roadways or shoulders of roadways, streets, or highways unless a certificate of ~~ownership title~~ has first been obtained from the department of justice in accordance with the laws of this state. A certificate of ~~ownership title~~ is not required for a snowmobile purchased prior to April 16, 1993, if use of the snowmobile is restricted to private land.

(2) ~~The owner of a snowmobile shall apply for a certificate of ownership with the county treasurer of the county in which the owner resides, upon forms to be furnished for this purpose. The forms must require the following information:~~

- ~~(a) the name of the owner;~~
- ~~(b) the residence of the owner, by town and county;~~
- ~~(c) the business or home mailing address of the owner;~~
- ~~(d) the name and address of any lienholder;~~
- ~~(e) the amount due under any contract or lien;~~
- ~~(f) the name of the manufacturer;~~
- ~~(g) the model number or name;~~
- ~~(h) the identification number; and~~

~~(i) the name and address of the dealer or other person from whom acquired. Unless expressly exempted, the provisions of Title 61, chapter 3, parts 1 and 2, apply to snowmobiles.~~

~~(3) The application must be accompanied by documentation of ownership, such as an invoice, notarized bill of sale from the immediately previous owner, foreign title, official certificate of snowmobile number, or fee in lieu of tax receipt.~~

~~(4) The application must be signed by at least one owner or by a properly authorized officer or representative of the owner.~~

~~(5) If a certificate of ownership has previously been issued under the provisions of 23-2-601 through 23-2-644, the application for a new certificate must be accompanied by the immediately previous certificate. This subsection does not apply to snowmobiles that are purchased as new and unused machines or that were operated when the provisions of 23-2-601 through 23-2-644 were not in force and effect.~~

~~(6) Upon completion of the application, on forms furnished by the department of justice, the county treasurer shall issue to the applicant two copies of the application, one of which must be marked "file copy". The treasurer shall forward one copy and the original application to the department of justice,~~

~~which shall enter the information contained in the application upon the corresponding records of its office and shall furnish the applicant with a certificate of ownership, which must contain that information in the application considered necessary by the department of justice, and a permanent ownership number. The certificate of ownership is not to be renewed annually and is valid as long as the person holding it owns the snowmobile.~~

~~(7) The owner shall at all times retain possession of the certificate of ownership, except when it is being transmitted to and from the department of justice for endorsement or cancellation.~~

~~(8) Upon application for a certificate of ownership, a fee of \$5 must be paid to the county treasurer, which must be forwarded by the county treasurer to the department of justice and deposited in the general fund.~~

~~(9) The department of justice may not file a voluntary security interest or lien unless it is accompanied by or specified in the application for a certificate of ownership of the snowmobile encumbered. If the approved lien notice is transmitted to the department of justice, the security agreement or other lien instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, the complete snowmobile description, the amount of the lien, and the signature of the debtor. The department of justice shall file voluntary security interests and liens by entering the name and address of the secured party upon the face of the certificate of ownership. Involuntary liens must be filed against the record of the snowmobile encumbered. The department of justice shall mail a statement certifying the filing of a security interest or lien to the secured party. The department of justice shall mail the certificate of ownership to the owner at the address given on the certificate; however, if the transfer of ownership and filing of the security interest are paid for by a creditor or secured party, the department of justice shall return the certificate of ownership to the county treasurer of the county in which the snowmobile is to be registered. The owner of a snowmobile is the person entitled to operate and possess the snowmobile.~~

~~(10) A security interest in a snowmobile held as inventory by a dealer must be perfected in accordance with Title 30, chapter 0A.~~

~~(11) Whenever a security interest or lien is filed against a snowmobile that is subject to two security interests previously perfected under this section, the department of justice shall endorse on the face of the certificate of ownership: "NOTICE. This snowmobile is subject to additional security interest on file with the Department of Justice." Other information regarding the additional security interests need not be endorsed on the certificate.~~

~~(12) Satisfactions or statements of release filed with the department of justice under this part must be retained for a period of 8 years after receipt, after which they may be destroyed.~~

~~(13) Except as provided in subsection (14), a voluntary security interest or lien is perfected on the date the lien notice is delivered to the county treasurer. On that date, the county treasurer shall issue to the secured party a receipt evidencing the perfection. Perfection under this section constitutes constructive notice to subsequent purchasers or encumbrancers, from the date of delivery of the lien notice to the county treasurer, of the existence of the security interest.~~

~~(14) Voluntary security interests or lien filings that do not require transfer of ownership are perfected on the date the lien notice and the certificate of~~

~~ownership or manufacturer's statement of origin are received by the department of justice. On that date, the department of justice shall issue to the secured party a receipt evidencing the perfection. Perfection under this subsection constitutes constructive notice to subsequent purchasers or encumbrancers, from the date the lien notice is delivered to the department of justice, of the existence of the security interest.~~

~~(15) Upon default under a chattel mortgage or conditional sales contract covering a snowmobile, the mortgagee or vendor has the same remedies as in the case of other personal property. In case of attachment of a snowmobile, all the provisions of 27-18-413, 27-18-414, and 27-18-804 are applicable, except that deposits must be made with the department of justice.~~

~~(16) A conditional sales vendor or chattel mortgagee or assignee who fails to file a satisfaction of a chattel mortgage, assignment, or conditional sales contract within 15 days after receiving final payment is required to pay the department of justice the sum of \$1 for each day that the satisfaction is not filed.~~

~~(17) Upon receipt of notice of any involuntary liens or attachments against the record of any snowmobile registered in this state, the department of justice shall within 24 hours mail to the owner, conditional sales vendor, mortgagee, or their assignee a notice showing the name and address of the lien claimant, the amount of the lien, the date of execution of the lien, and, in the case of attachment, the full title of the court, the action, and the name of the attorney for the plaintiff or the name of the attaching creditor, or both.~~

~~(18) It is not necessary to refile with the department of justice any instruments on file in the office of the county clerk and recorder on October 1, 1989.~~

~~(19) A fee of \$4 must be paid to the department of justice to file any security interest or other lien against a snowmobile. The \$4 fee must cover the cost of filing a satisfaction or release of the security interest and the cost of entering the satisfaction or release on the records of the department of justice and deleting the endorsement of the security interest from the face of the certificate of ownership. A fee of \$4 must be paid to the department of justice for issuing a certified copy of a certificate of ownership subject to a security interest or other lien on file with the department of justice or for filing an assignment of a security interest or other lien on file with the department of justice. All fees provided for in this section must be paid to the county treasurer for deposit in the state general fund in accordance with 15-1-504."~~

**Section 23.** Section 23-2-614, MCA, is amended to read:

**"23-2-614. Exemptions.** (1) (a) The provisions of 23-2-601 through 23-2-602, 23-2-611, 23-2-614, 23-2-615, 23-2-616 through 23-2-619, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644, with respect to registration, tax-paid decals, and certification of ownership, do not apply to:

(i) snowmobiles owned or used by the United States or another state or any agency or political subdivision thereof, of another state;

(ii) any a snowmobile registered in a country other than the United States and that is to be temporarily used within this state for a period of not more than 30 days; or

(iii) to any a snowmobile registered in another state of the United States but that is to be temporarily used within this state for not more than 30 days.

(b) Snowmobiles owned by the state of Montana or any agency or political subdivision ~~thereof of this state~~ are exempt only from the payment of fees and ~~shall~~ must otherwise comply with all the requirements of 23-2-601 through, 23-2-602, 23-2-611, 23-2-614, 23-2-615, 23-2-616 through 23-2-619, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644.

(2) The provisions of 23-2-601 through, 23-2-602, 23-2-611, 23-2-614, 23-2-615, 23-2-616 through 23-2-619, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 with respect to registration, tax-paid decals, and certification of ownership do not apply to unregistered snowmobiles owned by nonresidents of the state of Montana who either:

(a) display visual proof that a nonresident temporary-use permit has been purchased; or

(b) use the snowmobile only in races and for not more than 30 days in the state. "Race" means an organized competition on a predetermined course that is run according to accepted rules."

**Section 24.** Section 23-2-615, MCA, is amended to read:

**"23-2-615. Nonresident temporary-use permits — use of fees.** (1) The requirements ~~pertaining to the~~ for a nonresident temporary-snowmobile-use permit are as follows:

(a) Application for the issuance of the permit must be made at locations and upon forms prescribed by the department. The forms must include but are not limited to:

- (i) the applicant's name and permanent address;
- (ii) the make, model, year, and serial number of the snowmobile; and
- (iii) an affidavit declaring the nonresidency of the applicant.

(b) Upon submission of the application and a fee of \$6, a nonresident temporary-snowmobile-use sticker must be issued. The sticker must be displayed in a conspicuous manner on the snowmobile.

(2) The temporary permit is valid for a consecutive 30-day period as designated by the permit.

(3) The permit is not proof of ownership, and a certificate of ~~ownership~~ title may not be issued.

(4) A nonresident temporary-snowmobile-use permit is not required for a snowmobile that qualifies as a racing snowmobile under 23-2-622.

(5) All money collected by payment of fees under this section must be remitted to the department of revenue and deposited in the state general fund.

(6) The failure to display the permit as required by this section or the making of false statements in obtaining the permit is a misdemeanor, punishable by a fine of not less than \$25 or more than \$100."

**Section 25.** Section 23-2-616, MCA, is amended to read:

**"23-2-616. Registration and decals — application and issuance — use of certain fees.** (1) Except for a snowmobile registered under 23-2-621, a snowmobile may not be operated on public lands by any person ~~in Montana~~ unless it has been registered and there is displayed in a conspicuous place on both sides of the cowl a decal as visual proof that the fee in lieu of property tax has been paid on it for the current year and the immediately previous year as required by 15-16-202.

~~(2) (a) Application for registration must be made to the county treasurer upon forms to be furnished by the department of justice for this purpose, which may be obtained. A Montana resident who owns a snowmobile operated on public land shall register the snowmobile at the county treasurer's office in the county where the owner resides. The application must contain the following information:~~

- ~~(a) the name and address of the owner;~~
- ~~(b) the certificate of ownership number;~~
- ~~(c) the make of the snowmobile;~~
- ~~(d) the model name of the snowmobile;~~
- ~~(e) the year of manufacture;~~
- ~~(f) a statement evidencing payment of the fee in lieu of property tax as required by 15-16-202; and~~
- ~~(g) other information that the department of justice may require.~~

~~(b) A county treasurer shall register a snowmobile if:~~

~~(i) as of the date that the snowmobile is to be registered, the owner delivers or has delivered an application for a certificate of title to the department, its authorized agent, or a county treasurer; or~~

~~(ii) the county treasurer has confirmed that the department of justice has an electronic record of title for the snowmobile as provided in 61-3-101.~~

~~(c) To register a snowmobile, the county treasurer shall update the electronic record of title maintained by the department of justice, by entering the fees paid and recording any changes to the record.~~

~~(3) The application must be accompanied by owner registering a snowmobile shall pay a decal-registration fee of \$6.50, and, if the snowmobile has previously been registered, by show the county treasurer the registration certificate receipt for the most recent year in which the snowmobile was registered. The Upon payment of the proper fees, including the fee in lieu of tax, the treasurer shall sign the application and issue a registration receipt that must contain information considered necessary by the department of justice and a listing of fees paid. The owner shall retain possession of the registration receipt until it is surrendered to the county treasurer for reregistration or to a purchaser or subsequent owner pursuant to a transfer of ownership.~~

~~(4) The county treasurer shall forward the signed application to the department of justice and shall issue to the applicant a decal in the style and design prescribed by the department of justice and of a different color than the preceding year, numbered in sequence.~~

~~(5) The county treasurer may not accept any application register a snowmobile under this section until unless the applicant has paid the decal-registration fee and the fee in lieu of property tax on the snowmobile for the current year and, if required, the immediately previous year as required by 15-16-202.~~

~~(6) All money collected from payment of decal-registration fees and all interest accruing from use of this money must be forwarded to the department of revenue, as provided in 15-1-504, for deposit in the state general fund.~~

~~(7) The county treasurer shall credit all fees in lieu of tax collected on snowmobiles to the state general fund."~~

**Section 26.** Section 23-2-619, MCA, is amended to read:

**“23-2-619. Dealer registration certificate — use of fees — temporary registration permit.** (1) (a) Unless the dealer is licensed under the provisions of 61-4-101, a dealer registration certificate must be issued in accordance with 23-2-601 through 23-2-602, 23-2-611, 23-2-614, 23-2-615, 23-2-616 through 23-2-619, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644.

(b) To qualify as a dealer, the applicant, when registering or renewing a registration, shall:

(i) complete an application:

(A) stating the name under which the business is to be conducted and the location of the premises (street address, city, county, and state) where records are kept, sales are made, and stock is displayed;

(B) stating the name, address, date of birth, and social security number of all owners or persons having an interest in the business, provided that in the case of a corporation, the names and addresses of the president and secretary are sufficient;

(C) identifying other dealerships owned by the applicant, identifying all persons in Montana or in another state having an interest in another dealership owned by the applicant, and disclosing whether the applicant or any other person with interest in a dealership owned by the applicant has been convicted of a felony; and

(D) stating the name and make of all snowmobiles handled and the name and address of the manufacturer, importer, or distributor with whom the applicant has a written franchise or sales agreement;

(ii) provide an affidavit certifying that the applicant has acquired and shall maintain liability insurance for any snowmobile offered for demonstration or loan to a customer;

(iii) execute a certificate to the effect that the applicant has a permanent building for the display and sale of snowmobiles at the location of the premises where sales are conducted;

(iv) execute a certificate to the effect that the applicant has a bona fide service department for the repair, service, and maintenance of snowmobiles; and

(v) execute a certificate to the effect that the applicant is a bona fide dealer in snowmobiles and that the dealer is recognized by a manufacturer, importer, or distributor as a dealer in snowmobiles.

(2) The dealer application must be accompanied by an application fee of \$5 and a registration fee of \$5. Upon receipt of the dealer application and payment of fees, the dealer must be issued two dealer snowmobile identification cards that must be carried by the dealer or the dealer's customer when demonstrating the dealer's snowmobiles.

(3) (a) A dealer shall file a bond in the amount of \$5,000.

(b) The bond must be conditioned that the applicant shall conduct business in accordance with the requirements of the law. The bond must run to the state of Montana, must be approved by the department and filed in its office, and must be renewed annually.

(c) A person who suffers loss or damage because of the unlawful conduct of a dealer registered under this section shall obtain a judgment from a court of competent jurisdiction prior to collecting on the bond. Before payment on the bond is required, the judgment must determine a specific loss or damage amount and conclude that the dealer's unlawful operation caused the loss or damage.

(4) The dealer shall have a principal place of business where the dealer maintains all business records and where the dealer displays and sells merchandise.

(5) An applicant for renewal of a snowmobile dealer registration shall certify that the applicant has sold five or more snowmobiles during the preceding year or pay an additional \$50 renewal registration fee or provide a copy of a written new snowmobile franchise or sales agreement that the applicant has with a manufacturer, importer, or distributor.

(6) Additional dealer snowmobile identification cards as required by need justified to the department of justice may be purchased by the dealer for a fee of \$2.

(7) Dealer registration certificates and identification cards expire on June 30 following the date of issuance.

(8) *Prior to the delivery of a snowmobile to the purchaser, the dealer shall issue and affix to the snowmobile a temporary registration permit. The temporary registration permit expires 20 days after the date of issuance. The dealer shall keep a copy of the temporary registration permit for the dealer's records and shall send a copy of the temporary registration permit to the department of justice.*

~~(8)~~(9) (a) The dealer application fees and all interest accruing from use of this money must be deposited in the state special revenue fund to the credit of the department, with one-half designated for use in enforcing the purposes of 23-2-601 through 23-2-602, 23-2-611, 23-2-614, 23-2-615, 23-2-616 through 23-2-619, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 and one-half designated for use in the development, maintenance, and operation of snowmobile facilities.

(b) All money collected from dealer registration and renewal registration fees must be deposited in the general fund."

**Section 27.** Section 23-2-622, MCA, is amended to read:

**"23-2-622. Registration of racing snowmobile not required.** A snowmobile built or used exclusively for racing in sanctioned competitive events or organized races, including testing areas designated by the sponsoring entity, is exempt from the certificate of ownership title requirements of ~~23-2-611~~ [sections 5 through 11] and registration under [section 13] or 23-2-616."

**Section 28.** Section 23-2-631, MCA, is amended to read:

**"23-2-631. Operation on public roads, streets, and highways.** (1) A person may not operate a snowmobile upon a controlled access highway or facility at any time. Snowmobile operation is permitted on the roadway or shoulder of any public road or highway, state highway, county road, or city street located within the boundaries of any municipality only in the event that:

(a) the street, road, or highway is drifted or covered by snow to ~~such an~~ the extent that travel on the street, road, or highway by other motor vehicles is impractical or impossible;



(b) the operator has received permission or is otherwise authorized for that travel by the municipality in the case of town or city streets, the board of county commissioners for county roads, or the state highway patrol for all other highways; or

(c) operation has been authorized on municipal streets by a municipal ordinance.

(2) A snowmobile may make a direct crossing of a street or highway whenever the crossing is necessary to get to another authorized area of operation. The crossing must be made at an angle of approximately 90 degrees to the direction of traffic at a place where no obstruction prevents a quick and safe crossing. The snowmobile must make a complete stop before entering upon any part of the traffic way, and the operator shall yield the right-of-way to all oncoming traffic.

(3) A snowmobile may not be operated upon a public street or highway when permitted to do so by ~~23-2-601 through~~, 23-2-602, 23-2-611, 23-2-614, 23-2-615, 23-2-616 through 23-2-619, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 unless equipped with at least one headlamp and one taillamp, which must be lighted at all times during operation, and unless equipped with a suitable braking device operable by either hand or foot.

(4) (a) Unless operation is otherwise allowed under subsection (4)(b) or (4)(c), the operator of a snowmobile who operates the snowmobile upon a public roadway, street, or highway when allowed to do so under the provisions of ~~23-2-601 through~~, 23-2-602, 23-2-611, 23-2-614, 23-2-615, 23-2-616 through 23-2-619, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 must have in possession a license to drive a motor vehicle as required by the laws of the state of Montana.

(b) The operator of a snowmobile may operate the snowmobile upon a public roadway, street, or highway when allowed to do so under the provisions of ~~23-2-601 through~~, 23-2-602, 23-2-611, 23-2-614, 23-2-615, 23-2-616 through 23-2-619, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 if the operator:

(i) has in possession a certificate showing the successful completion of a Montana-approved snowmobile safety education course; and

(ii) is in the physical presence and under the supervision of a person who is 18 years of age or older.

(c) An operator who crosses a street, road, or highway, who operates a snowmobile upon a street, road, or highway that is drifted or covered with snow to ~~such an~~ the extent that travel on the street, road, or highway by other motor vehicles is impractical or impossible, or who operates a snowmobile in any other areas of the state where operation is lawfully permitted is not required to apply for or possess a driver's license under the laws of the state of Montana."

**Section 29.** Section 23-2-634, MCA, is amended to read:

**"23-2-634. Regulation of snowmobile noise.** (1) Except as provided in this section, ~~every~~ each snowmobile must be equipped at all times with noise-suppression devices, including an exhaust muffler in good working order and in constant operation. A snowmobile may not be modified by any person in any manner that will amplify or otherwise increase total noise emissions to a level greater than that emitted by the snowmobile as originally constructed, regardless of date of manufacture.

(2) ~~Every~~ Each person who owns or operates a snowmobile manufactured after June 30, 1972, but prior to June 30, 1975, shall maintain the machine in such a manner that it will not exceed a sound level limitation of 82 dbA measured at 50 feet.

(3) A snowmobile manufactured after June 30, 1975, except snowmobiles designated for competition purposes only, may not be sold or offered for sale unless that machine has been certified by the manufacturer as being able to conform to a sound level limitation of not more than 78 dbA measured at 50 feet. ~~Every~~ Each person who owns or operates a snowmobile manufactured after June 30, 1975, shall maintain the machine in ~~such~~ a manner so that it will not exceed a sound level limitation of 78 dbA measured at 50 feet.

(4) A manufacturer who certifies that a new snowmobile can comply with the noise limitation requirements of 23-2-601 ~~through~~, 23-2-602, 23-2-611, 23-2-614, 23-2-615, 23-2-616 through 23-2-619, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 shall affix a permanent notice of that certification to every snowmobile offered for sale in the state of Montana.

(5) In certifying that a new snowmobile can comply with the noise limitation requirements of 23-2-601 ~~through~~, 23-2-602, 23-2-611, 23-2-614, 23-2-615, 23-2-616 through 23-2-619, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644, a manufacturer shall make the certification based upon measurements made in accordance with SAE recommended practice J192, as amended. The department, in enforcing the provisions of this section, shall make measurements of snowmobile noise in accordance with applicable practices outlined in the "Procedure for Sound Level Measurements of Snowmobiles" (January, 1969), as amended, used by the international snowmobile industry association or with other standards for measurement of sound level ~~as that~~ the department may adopt.

(6) This section does not apply to organized races or similar competitive events held on:

(a) private lands or waters, with the permission of the owner, lessee, or custodian of the land or waters; or

(b) public lands or waters, with the consent of the public agency having the authority to grant consent."

**Section 30.** Section 23-2-641, MCA, is amended to read:

**"23-2-641. Enforcement.** (1) With respect to the sale of any new snowmobile that is subject to the provisions of 23-2-601 ~~through~~, 23-2-602, 23-2-611, 23-2-614, 23-2-615, 23-2-616 through 23-2-619, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644, the attorney general shall, upon the request of the department, sue for the recovery of the penalties provided in 23-2-642 and bring an action for a restraining order or temporary or permanent injunction against a person who sells or offers to sell a new snowmobile that does not satisfy the sound level limitations imposed by 23-2-601 ~~through~~, 23-2-602, 23-2-611, 23-2-614, 23-2-615, 23-2-616 through 23-2-619, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644.

(2) (a) The department is a criminal justice agency for the purpose of obtaining the technical assistance and support services provided by the board of crime control under the provisions of 44-4-301. Authorized officers of the department are granted peace officer status with the power:

- (i) of search, seizure, and arrest;
  - (ii) to investigate activities in this state regulated by this part and rules of the department and the fish, wildlife, and parks commission; and
  - (iii) to report violations to the county attorney of the county in which they occur.
- (b) Sheriffs and their deputies of the various counties of the state, the Montana highway patrol, authorized officers of the department, and the police of each municipality shall enforce the provisions of this part."

**Section 31.** Section 23-2-642, MCA, is amended to read:

**"23-2-642. Penalties.** (1) The failure to display a current decal indicating that the fee in lieu of property tax has been paid on the snowmobile for the current year during the time provided in 23-2-601 ~~through, 23-2-602, 23-2-611, 23-2-614, 23-2-615, 23-2-616 through 23-2-619, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644~~ is a misdemeanor, punishable by a fine in an amount equal to five times the applicable fee in lieu of tax payable under 23-2-626.

(2) A person who violates any other provision of 23-2-601 ~~through, 23-2-602, 23-2-611, 23-2-614, 23-2-615, 23-2-616 through 23-2-619, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644~~ or a rule adopted pursuant to those sections shall pay a civil penalty of not less than \$15 or more than \$500 for each separate violation. If the violation is willful, the person shall pay a civil penalty of not less than \$50 or more than \$1,000 for each separate violation.

(3) A manufacturer who certifies that a new snowmobile can meet the sound level limitations imposed by 23-2-601 ~~through, 23-2-602, 23-2-611, 23-2-614, 23-2-615, 23-2-616 through 23-2-619, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644~~ is subject to the penalty provisions of subsection (2) if any machine so certified does not meet the appropriate sound level limitation. For the purposes of this section, ~~every~~ each sale of a new snowmobile that does not meet the sound level limitations imposed by 23-2-601 ~~through, 23-2-602, 23-2-611, 23-2-614, 23-2-615, 23-2-616 through 23-2-619, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644~~ constitutes a separate violation."

**Section 32.** Section 23-2-644, MCA, is amended to read:

**"23-2-644. Deposit of funds from fines and forfeitures.** All fines and forfeitures collected under 23-2-601 ~~through, 23-2-602, 23-2-611, 23-2-614, 23-2-615, 23-2-616 through 23-2-619, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644~~ relating to snowmobiles, except those collected by a justice's court, must be transmitted to the department of revenue for deposit in the state general fund."

**Section 33.** Section 23-2-801, MCA, is amended to read:

**"23-2-801. Definitions.** (1) As used in this part, ~~unless the context clearly indicates otherwise, the following definitions apply:~~

(1) ~~"Certificate of ownership" means a document issued by the department of justice as prima facie evidence of ownership as provided in 23-2-811.~~

(2) (a) ~~"Off-highway vehicle"~~ "off-highway vehicle" means a self-propelled vehicle used for recreation or cross-country travel on public lands, trails, easements, lakes, rivers, or streams. The term includes but is not limited to

motorcycles, quadricycles, dune buggies, amphibious vehicles, air cushion vehicles, and any other means of land transportation deriving motive power from any source other than muscle or wind.

~~(b)~~(2) Off-highway vehicle does not include:

~~(i)~~(a) vehicles designed primarily for travel on, over, or in the water;

~~(ii)~~(b) snowmobiles; or

~~(iii)~~(c) except as provided in 23-2-804, vehicles otherwise ~~licensed~~ issued a certificate of title and registered under the laws of the state, unless the vehicle is used for off-road recreation on public lands.”

**Section 34.** Section 23-2-804, MCA, is amended to read:

**“23-2-804. Decal required.** (1) Except as provided in 23-2-802, an off-highway vehicle may not be operated by any person for off-road recreation on public lands in Montana unless there is displayed in a conspicuous place a decal, in a form prescribed by the department of justice and issued by the county treasurer, as visual proof that the following fees have been paid for the current year:

(a) (i) the fee in lieu of tax provided for in 23-2-803; and

(ii) the registration fee provided for in 61-3-321; or

(b) when the vehicle will be used as provided in this section, the registration and taxation fees for motorcycles and quadricycles subject to licensure under 61-3-321, as evidenced by presentation of an owner’s certificate of registration and payment receipt. *The county treasurer may confirm the registration status of a motorcycle or quadricycle by examining the current registration receipt for the vehicle or checking the electronic record of title for the vehicle.*

(2) The decal must be serially numbered and have the expiration date of December 31 of the appropriate year printed on the decal.”

**Section 35.** Section 23-2-814, MCA, is amended to read:

**“23-2-814. Nonresident temporary-use permits.** (1) An off-highway vehicle that is owned by a nonresident and that is not registered in another state of the United States or in another country may not be operated by a person in Montana unless a nonresident temporary-use permit is obtained.

(2) The requirements pertaining to a nonresident temporary-use permit for an off-highway vehicle are as follows:

(a) Application for the issuance of the permit must be made at locations and upon forms prescribed by the department of fish, wildlife, and parks. The forms must include but are not limited to:

(i) the applicant’s name and permanent address;

(ii) the make, model, year, and serial number of the off-highway vehicle; and

(iii) an affidavit declaring the nonresidency of the applicant.

(b) Upon submission of the application and a fee of \$5, a nonresident off-highway vehicle temporary-use sticker must be issued. The sticker must be displayed in a conspicuous manner on the off-highway vehicle. The sticker is the temporary-use permit.

(3) The temporary-use permit is valid for the calendar year designated on the permit.

(4) The permit is not proof of ownership, and a certificate of ~~ownership~~ *ownership title* may not be issued.

(5) All money collected by payment of fees under this section must be transmitted to the department of revenue for deposit in the state general fund.

(6) Failure to display the permit as required by this section or making false statements in obtaining the permit is a misdemeanor and is punishable by a fine of not less than \$25 or more than \$100. All fines collected under this section must be transmitted to the department of revenue for deposit in the state general fund.”

**Section 36.** Section 23-2-817, MCA, is amended to read:

**“23-2-817. Registration fee — application and issuance — disposition.** (1) Each off-highway vehicle is subject to an annual registration fee of \$2.

(2) The county treasurer shall collect the annual fee when the fee in lieu of tax is collected.

(3) Application for registration must be made to the county treasurer of the county in which the owner resides, on a form furnished by the department of justice for that purpose. The application must contain:

- (a) the name and home mailing address of the owner;
- (b) the certificate of ~~ownership~~ *ownership title* number;
- (c) the name of the manufacturer of the off-highway vehicle;
- (d) the model number or name;
- (e) the year of manufacture;
- (f) a statement evidencing payment of the fee in lieu of property tax; and
- (g) such other information ~~as~~ *that* the department of justice may require.

(4) If the off-highway vehicle was previously registered, the application must be accompanied by the registration certificate for the most recent year in which it was registered. Upon payment of the registration fee, the county treasurer shall sign the application and issue a registration receipt, which must contain the information considered necessary by the department of justice and a listing of the fees paid. The owner shall retain possession of the registration receipt until it is surrendered to the county treasurer for reregistration or to a purchaser or subsequent owner pursuant to a transfer of ownership.

(5) All registration fees collected must be forwarded to the department of justice and deposited in the general fund.”

**Section 37.** Section 23-2-818, MCA, is amended to read:

**“23-2-818. Dealer registration certificate — temporary registration permit.** (1) (a) Unless the dealer is licensed under the provisions of 61-4-101, a dealer may not sell off-highway vehicles unless the dealer has first obtained a dealer registration certificate from the department of justice under the provisions of this section.

(b) To qualify as a dealer the applicant, when registering or renewing a registration, shall:

- (i) complete an application:

(A) stating the name under which the business is to be conducted and the location of the premises (street address, city, county, and state) where records are kept, sales are made, and stock is displayed;

(B) stating the name, address, date of birth, and social security number of all owners or persons having an interest in the business, provided that in the case of a corporation, the names and addresses of the president and secretary are sufficient;

(C) identifying other dealerships owned by the applicant, identifying all persons in Montana or in another state having an interest in another dealership owned by the applicant, and disclosing whether the applicant or any other person with interest in a dealership owned by the applicant has been convicted of a felony; and

(D) stating the name and make of all off-highway vehicles handled and the name and address of the manufacturer, importer, or distributor with whom the applicant has a written franchise or sales agreement;

(ii) provide an affidavit certifying that the applicant has acquired and shall maintain liability insurance for any off-highway vehicle offered for demonstration or loan to a customer;

(iii) execute a certificate to the effect that the applicant has a permanent building for the display and sale of off-highway vehicles at the location of the premises where sales are conducted;

(iv) execute a certificate to the effect that the applicant has a bona fide service department for the repair, service, and maintenance of off-highway vehicles; and

(v) execute a certificate to the effect that the applicant is a bona fide dealer in off-highway vehicles and that the dealer is recognized by a manufacturer, importer, or distributor as a dealer in off-highway vehicles.

(2) The dealer application for registration or renewal of registration must be accompanied by an application or renewal fee of \$5 and a registration fee of \$5. To qualify for the fees in this subsection, the applicant for renewal shall certify that the applicant has sold three or more off-highway vehicles during the preceding year. Upon receipt of the dealer application or renewal and payment of fees, the dealer must be issued two dealer off-highway identification cards to be carried by the dealer or the dealer's customer when demonstrating the dealer's off-highway vehicles. Additional dealer off-highway vehicle identification cards may be purchased by the dealer from the department of justice for a fee of \$2 each.

(3) (a) A dealer shall file a bond in the amount of \$5,000.

(b) The bond must be conditioned that the applicant shall conduct business in accordance with the requirements of the law. The bond must run to the state of Montana, must be approved by the department and filed in its office, and must be renewed annually.

(c) A person who suffers loss or damage because of the unlawful conduct of a dealer registered under this section shall obtain a judgment from a court of competent jurisdiction prior to collecting on the bond. Before payment on the bond is required, the judgment must determine a specific loss or damage amount and conclude that the dealer's unlawful operation caused the loss or damage.

(4) The dealer shall have a principal place of business where the dealer maintains all business records and where the dealer displays and sells merchandise.

(5) An applicant for renewal of an off-highway vehicle dealer registration who does not qualify under subsection (2) shall:

(a) pay an additional \$50 renewal registration fee; and

(b) provide a copy of a new off-highway vehicle franchise or sales agreement that the applicant has with a manufacturer, importer, or distributor.

(6) Dealer registration certificates and identification cards expire on December 31 following the date of issuance.

(7) *Prior to delivery of an off-highway vehicle to a purchaser, the dealer shall issue and affix to the off-highway vehicle a temporary registration permit, as defined in [section 3]. The dealer shall keep a copy of the temporary registration permit for the dealer's records and shall send a copy of the temporary registration permit to the department of justice.*

~~(7)~~(8) (a) The dealer application fees and all interest accruing from use of this money must be deposited in the general fund to be used by the department of justice for the administration of this part.

(b) All dealer registration fees and renewal fees collected must be deposited in the state general fund.”

**Section 38.** Section 30-9A-311, MCA, is amended to read:

**“30-9A-311. Perfection of security interests in property subject to certain statutes, regulations, and treaties.** (1) Except as otherwise provided in subsection (4), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(a) a statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt 30-9A-310(1);

(b) the certificate of ~~ownership~~ *title* provisions of Title 23 or ~~Title~~ 61; or

(c) a certificate of title statute of another jurisdiction that provides for a security interest to be indicated on the certificate *of title* as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

(2) Compliance with the requirements of a statute, regulation, or treaty described in subsection (1) for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this chapter. Except as otherwise provided in 30-9A-313 and 30-9A-316(4) and (5) and subsection (4) of this section for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in subsection (1) may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(3) Except as otherwise provided in 30-9A-316(4) and (5) and subsection (4) of this section, duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in subsection (1) are governed by the statute, regulation, or treaty. In other respects the security interest is subject to this chapter.

(4) During any period in which collateral subject to a statute specified in subsection (1)(b) is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind, this section does not apply to a security interest in that collateral created by that person.”

**Section 39.** Section 31-1-816, MCA, is amended to read:

**“31-1-816. Title loan requirements — liability of borrower.** (1) Any licensed title lender may engage in the business of making loans secured by a certificate of title subject to the provisions of this part.

(2) Every title loan must be reduced to writing in a title loan agreement. Each title loan agreement must provide that:

(a) the title lender agrees to make a loan of money to the borrower and that the borrower agrees to give the title lender a security interest in unencumbered titled personal property owned by the borrower;

(b) the borrower consents to the title lender keeping possession of the certificate of title;

(c) the borrower has the exclusive right to redeem the certificate of title by repaying the loan of money in full and by complying with the title loan agreement for an agreed period of time;

(d) (i) the title lender may renew the title loan for additional 30-day periods beyond the original term provided that beginning with the sixth extension or continuation, and for each subsequent extension or continuation, the borrower must reduce the principal amount by at least 10% of the original principal amount of the loan; and

(ii) if the borrower fails to reduce the principal amount as required by subsection (2)(d)(i), the title lender may at its option:

(A) declare outstanding principal and any finance charges due and payable; or

(B) solely for the purpose of calculating the finance charge, reduce the amount of the principal balance by 10%, with the understanding that that portion of the principal is still owed by the borrower but that portion of the loan may not accrue interest or finance charges after that date;

(e) when the certificate of title is redeemed, the title lender shall release its security interest in the titled personal property and return the personal property certificate of title to the borrower;

(f) (i) upon failure of the borrower to redeem the certificate of title at the end of the original 30-day agreement period or at the end of any agreed-upon 30-day renewal or subsequent renewals, the borrower shall deliver the titled personal property to the title lender at the location specified in the title loan agreement; and

(ii) the borrower shall deliver the titled personal property to the title lender in substantially the same condition that it was in at the time that the borrower entered into the loan, minus normal wear and tear;

(g) if the borrower fails to deliver the titled personal property to the title lender, the title lender must be allowed to take possession of the titled personal property;



(h) upon obtaining possession of the titled personal property, the title lender is authorized to sell the titled personal property and to convey to the buyer good title, subject to the waiting periods provided for in 31-1-820; and

(i) a borrower who does not redeem a pledged certificate of title is not personally liable to the title lender to repay principal, interest, or expenses incurred in connection with the title loan and that the title lender shall look solely to the titled personal property for satisfaction of the amounts owed under the title loan agreement.

(3) The security interest provided for in subsection (2)(a) is not perfected unless it is filed in accordance with ~~23-2-611~~ or 61-3-103.

(4) Any borrower who obtains a title loan from a title lender under false pretenses by hiding or not disclosing the existence of a valid prior lien or security interest affecting the titled personal property is personally liable to the title lender for the full amount stated in the title loan agreement, including interest and expenses incurred by the title lender in connection with the loan.”

**Section 40.** Section 40-5-248, MCA, is amended to read:

**“40-5-248. Lien against real and personal property — effect of lien — interest — warrant for distraint.** (1) There is a support lien on the real and personal property of an obligor:

(a) when the department has entered a final decision in a contested case under this chapter that finds the obligor owes a sum certain debt either to the department or to an obligee, or both; or

(b) upon registration under 40-5-271 of a support order that includes finding that the obligor owes a sum certain amount of delinquent support.

(2) A support lien is for the amount required to satisfy:

(a) the sum certain debt shown in a final decision in a contested case under this chapter or the sum certain support debt included in any support order registered under 40-5-271;

(b) interest claimed under this section; and

(c) any fees that may be due under 40-5-210.

(3) A support lien has the priority of a secured creditor from the date the lien is perfected as provided by this section; however, the lien is subordinate to:

(a) any prior perfected lien or security interest;

(b) a mortgage, the proceeds of which are used by an obligor to purchase real property; or

(c) any perfected purchase money security interest, as described in 30-9A-301.

(4) Support liens remain in effect until the delinquency upon which the lien is based is satisfied or until the applicable statute of limitations expires, whichever occurs first.

(5) The lien applies to all real and personal property owned by the obligor if it can be located in the state. The lien applies to all real and personal property that the obligor can afterward acquire. Except as provided in subsections (5)(a) and (5)(b), the department may not impose a lien under this section upon a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, or upon the assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1.

(a) The department may impose a lien under this section upon a self-sufficiency trust or upon the assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, if the department is required by federal law to recover or collect from the trust or its assets as a condition of receiving federal financial participation for the child support enforcement program or for temporary assistance for needy families, as defined in 53-4-201.

(b) To the extent otherwise permitted by this section, the department is not precluded from asserting a claim or imposing a lien upon real or personal property prior to transfer of the property to the trust. If the department imposes a lien upon property prior to transfer to a self-sufficiency trust, any transfer of the property to the trust is subject to the lien.

(6) The department shall keep a record of support liens asserted under this section in the registry of support orders established by 40-5-271.

(7) A support lien is perfected:

(a) as to real property, upon filing a notice of support lien with the clerk of the district court in the county or counties in which the real property is or may be located at the time of filing or at any time in the future;

(b) as to motor vehicles or other items for which a certificate of ~~ownership~~ *title* is issued by the department of justice, upon filing a notice of support lien with the department of justice in accordance with the provisions of Titles 23 and 61;

(c) as to all other personal property, upon filing a notice of support lien in the place required to perfect a security interest under 30-9A-301. The county clerk and recorder or the secretary of state, as appropriate, shall cause the notice of support lien to be marked, held, and indexed as if the notice of support lien were a financing statement within the meaning of the Uniform Commercial Code.

(8) A buyer, in the ordinary course of business, who buys an obligor's personal property for value and who buys in good faith and without knowledge of the support lien takes the property free of the support lien.

(9) (a) The department may charge interest on the support lien at the rate of 1% per month.

(b) Interest accrues at the close of the business day on the last day of each month and is calculated by multiplying the unpaid balance of the lien, including prior accrued interest existing at the end of the day, by the applicable rate of interest.

(c) A provision of this section may not be construed to require the department to maintain interest balance due accounts. The department may waive interest if waiver would facilitate the collection of the debt.

(d) Interest under this subsection (9) is in addition to and not in substitution for any other interest accrued or accruing under any other provision of law.

(10) (a) Upon receiving payment in full of the amount of the lien plus interest and fees, if any, the department shall take all necessary steps to release the support lien.

(b) Upon receiving partial payment of the support lien or if the department determines that a release or partial release of the lien will facilitate the collection of support arrearages, the department may release or partially release the support lien. The department may release the support lien if it determines that the lien is unenforceable.

(11) A support lien under this section is in addition to any other lien created by law.

(12) A support lien under this section may not be discharged in bankruptcy.

(13) Support liens provided for by this section may be enforced or collected through the warrant for distraint provided for by 40-5-247."

**Section 41.** Section 61-1-102, MCA, is amended to read:

**"61-1-102. Motor vehicle.** (1) "Motor vehicle" means:

(a) means a vehicle propelled by its own power and designed or used to transport persons or property upon the highways of the state-;

(b) ~~For~~ for the purpose of chapter 3, ~~the term also~~ includes trailers and semitrailers-;

(c) ~~For~~ for the purpose of chapter 3, parts 1 and 2, ~~the term also~~ includes campers, as defined in 61-1-129, motorboats and personal watercraft, as defined in 23-2-502, sailboats, as defined in 23-2-502, that are 12 feet in length or longer, and snowmobiles, as defined in 23-2-601.

(2) The term does not include a bicycle as defined in 61-1-123."

**Section 42.** Section 61-1-509, MCA, is amended to read:

**"61-1-509. Certificate of ownership title.** "Certificate of ownership title" means the ~~certificate paper record~~ issued by the department ~~to the transferee upon a transfer of ownership of a~~ or by the appropriate agency of another jurisdiction that establishes a verifiable record of ownership between an identified person or persons and the motor vehicle specifically described in the record and that provides notice of a perfected security interest in the motor vehicle."

**Section 43.** Section 61-3-101, MCA, is amended to read:

**"61-3-101. Duties of department — records.** (1) (a) ~~The department shall keep a create and maintain a central registry of electronic files that includes an electronic record of title as specified in this section of all motor vehicles, trailers, and semitrailers of every kind, of certificates of registration and ownership of those vehicles, and of all manufacturers and dealers in for motor vehicles for which:~~

(i) ~~an application for a certificate of title has been received by the department, its authorized agent, or a county treasurer;~~

(ii) ~~a certificate of title has been issued by the department; or~~

(iii) ~~a registration, security interest, or lien transaction has been recorded by the department.~~

(b) ~~The central registry of electronic files described in subsection (1) must include an electronic record of registration for each vehicle registered in this state:~~

(i) ~~for which the certificate of title was issued by another jurisdiction and that was registered in another jurisdiction; or~~

(ii) ~~for which a certificate of title has not been issued or is not required.~~

(2) ~~The electronic record of title for a motor vehicle must show~~ contain the following information:

~~(a) the name of the owner, the residence address by street or rural route, the town, and the county and the mailing address if different from the residence address of the owner and:~~

~~(i) if the owner is the holder of a driver's license or identification card issued by the department or by a motor vehicle agency of another jurisdiction, the owner's driver's license or identification card number and the issuing jurisdiction; or~~

~~(ii) if the owner is a corporation, the registered agent's name and, if the agent is the holder of a driver's license or identification card, the agent's driver's license or identification card number and the issuing jurisdiction;~~

~~(b) the name and address of the conditional sales vendor, mortgagee, or other lienholder and the amount due under the contract or lien; a description of the motor vehicle, including, as pertinent to the motor vehicle:~~

~~(c)(i) the manufacturer of the vehicle;~~

~~(c)(ii) the manufacturer's designation of the style of the vehicle;~~

~~(c)(iii) the identifying number;~~

~~(c)(iv) the manufacturer's designated model year of manufacture and the odometer reading at the time of the transfer of ownership;~~

~~(c)(v) the character of the motive power and the shipping weight of the vehicle as shown by the manufacturer;~~

~~(c)(vi) the distinctive license number assigned to the vehicle, if any;~~

~~(c)(vii) if a truck or trailer, the number of tons capacity or GVW if imprinted on the manufacturer's identification plate the gross vehicle weight and gross vehicle weight rating, as determined by the manufacturer, or, for a trailer operating interstate, the declared weight;~~

~~(j) except as provided in 61-3-103, the name and complete address of any holder of a perfected security interest in the vehicle;~~

~~(viii) the unique transaction record number, when available and assigned by the department, for each transaction pertaining to the vehicle and the date of each transaction;~~

~~(ix) any brand required under state law or any brand carried forward from a certificate of title surrendered from another jurisdiction;~~

~~(x) if the vehicle has been or is currently registered in this state, the distinctive license plate number or certificate number assigned to the vehicle and a record of all fees and local option taxes, if applicable, paid for the current and preceding registration periods; and~~

~~(k)(xi) other information that may be required for registration or may from time to time be found desirable.~~

~~(3) The department shall file applications for registration received by it from county treasurers and register the vehicles and the vehicle owners as follows:~~

~~(a) under the distinctive license number assigned to the vehicle by the county treasurer;~~

~~(b) alphabetically under the name of the owner;~~

~~(c) numerically under make and identifying number of the vehicle; and~~

~~(d) under another index of registration as the department considers expedient. The electronic record of registration for a motor vehicle must contain, at a minimum, the following information:~~

(a) the name, residence, and mailing address of the owner and the driver's license or identification card data required in subsections (2)(a)(i) and (2)(a)(ii);

(b) the same data that is required under subsection (2)(b) for the electronic record of title; and

(c) any other data considered to be pertinent by the department.

~~(4) The department shall determine the amount of fees, including local option taxes or fees, to be collected at the time of registration for each light vehicle subject to a registration fee under 61-3-560 through 61-3-562 and for each bus, truck having a manufacturer's rated capacity of more than 1 ton, and truck tractor subject to a fee in lieu of tax under 61-3-528 and 61-3-529. The county treasurer shall collect the registration fee, other appropriate fees, and local option taxes or fees, if applicable, on each motor vehicle at the time of its registration.~~

~~(5) Vehicle registration records and indexes and driver's license records and indexes may be maintained by electronic recording and storage media.~~

~~(6) In the case of dealers, the records must show the information contained in the application for a dealer's, wholesaler's, or auto auction license, as required by chapter 4, parts 1 and 2, of this title, as well as the distinctive license number assigned to the dealer.~~

~~(7)(4) In order to prevent an accumulation of unneeded records and files, regardless of any other statutory requirements, the department may destroy all records and files that relate to vehicles that have not been registered within the preceding 4 years and that do not have an active lien.~~

~~(8)(5) Subject to the provisions of Title 61, chapter 11, part 5, department vehicle records maintained by the department must be open to inspection during reasonable business hours, and the department shall furnish any information from the records, except personal information and highly restricted personal information, as defined in 61-11-503, upon payment by the applicant of the cost of the information requested. Prior to providing the information, the department shall require the applicant to provide identification. The department may not disclose personal information or highly restricted personal information except as permitted or required under 61-11-507, 61-11-508, or 61-11-509."~~

**Section 44.** Section 61-3-103, MCA, is amended to read:

**"61-3-103. (Temporary) Filing of security interests — perfection — rights — procedure — fees.** (1) (a) Except as provided in ~~61-3-109~~ subsection (2), the department, its authorized agent, or a county treasurer shall, upon payment of the fee required by subsection (5), enter a ~~may not file any~~ voluntary security interest or lien ~~unless it is accompanied by or specified in the application for a certificate of ownership of the vehicle encumbered. If the approved notice form is transmitted to the department, the security agreement or other lien instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, the complete vehicle description, and the amount of the lien and is signed by the debtor. The department shall file voluntary security interests and liens by entering the name and address of the secured party upon the face of the~~

~~certificate of ownership. Involuntary liens must be filed against the record of the vehicle encumbered. The department shall mail a statement certifying to the filing of a security interest or lien to the secured party. The department shall mail the certificate of ownership to the owner at the address given on the certificate; however, if the transfer of ownership and filing of the security interest are paid for by a creditor or secured party, the department shall return the certificate of ownership to the county treasurer in the county in which the vehicle is to be registered. The owner of a motor vehicle is the person entitled to operate and possess the motor vehicle. against the electronic record of title for a motor vehicle upon receipt of a written acknowledgment by a vehicle owner of a voluntary security interest or lien on a form required by the department. The entry may be made if:~~

~~(i) the person is applying for a certificate of title and the manufacturer's certificate of origin or a certificate of title is being surrendered; or~~

~~(ii) a transfer of ownership is not sought.~~

~~(b) After the voluntary security interest or lien has been entered on the electronic record of title for the vehicle, the department, its authorized agent, or a county treasurer shall issue a transaction summary receipt to the owner and, if requested, to the secured party or lienholder, showing the date that the security interest or lien was perfected.~~

~~(c) A voluntary security interest or lien is perfected on the date that the department, its authorized agent, or a county treasurer receives the written acknowledgment of the voluntary security interest or lien from the owner of the vehicle.~~

~~(d) Unless a person applying for a certificate of title requests issuance of a certificate of title under 61-3-201, the department may not record a voluntary security interest or lien on the face of a certificate of title.~~

(2) A security interest in a motor vehicle held as inventory by a dealer licensed under Title 23, chapter 2, part 5, 6, or 8, or chapter 4 of this title must be perfected in accordance with Title 30, chapter 9A.

(3) Whenever a security interest or lien is filed against *the electronic record of title* for a motor vehicle that is subject to two security interests previously perfected under this section *and the applicant has requested issuance of a certificate of title under 61-3-201*, the department shall endorse on the face of the certificate of ownership, "NOTICE. This motor vehicle is subject to additional security interests on file with the Department of Justice." Other information regarding the additional security interests ~~need~~ *is not required* to be endorsed on the certificate.

~~(4) Satisfactions or statements of release filed with the department under this chapter must be retained by it for a period of 8 years after receipt, after which they may be destroyed.~~

~~(5) Except as provided in 61-3-109 and subsection (6) of this section, a voluntary security interest or lien is perfected on the date that the lien notice and the certificate of ownership or manufacturer's statement of origin are delivered to the county treasurer. On that date, the county treasurer shall issue to the secured party a receipt evidencing the perfection. Perfection under this section constitutes constructive notice to subsequent purchasers or encumbrancers, from the date of delivery of the lien notice to the county treasurer, of the existence of the security interest.~~

~~(6) Except as provided in 61-3-109, voluntary security interests or lien filings that do not require transfer of ownership are perfected on the date that the lien notice and the certificate of ownership or manufacturer's statement of origin are received by the department. On that date, the department shall issue to the secured party a receipt evidencing the perfection. Perfection under this subsection constitutes constructive notice to subsequent purchasers or encumbrancers, from the date that the lien notice is delivered to the department, of the existence of the security interest.~~

~~(7)(4) Upon default under a chattel mortgage or conditional sales contract covering a motor vehicle, the mortgagee or vendor has the same remedies as in the case of other personal property. In case of attachment of motor vehicles, all the provisions of 27-18-413, 27-18-414, and 27-18-804 are applicable except that deposits must be made with the department.~~

~~(8)(5) A conditional sales vendor or chattel mortgagee or assignee secured party or lienholder who has a perfected security interest in a vehicle and who fails to file a satisfaction of a chattel mortgage, assignment, or conditional sales contract the security interest or lien within 15 21 days after receiving final payment is required to pay the department the sum of \$1 \$25 for each day that the person secured party or lienholder fails to file the satisfaction.~~

~~(9)(6) Upon receipt of Within 24 hours after receiving notice of any involuntary liens or attachments against the record of any motor vehicle registered in this state, the department shall within 24 hours mail to the owner, conditional sale vendor, mortgagees, or assignees of the owner, conditional sale vendor, or mortgagees or any secured party or lienholder of record a notice showing the name and address of the lien claimant, the amount of the lien, the date of execution of the lien, and, in the case of attachment, the full title of the court and the action and the names of the attorneys for the plaintiff and attaching creditor.~~

~~(10) It is not necessary to refile with the department any instruments on file in the offices of the county clerk and recorders at the time that this law takes effect.~~

~~(7) (a) This section does not prevent a secured party or lienholder from assigning the secured party's or lienholder's interest in a motor vehicle, for which a certificate of title is issued under this chapter, to any other person without the consent of and without affecting the interest of the holder of the certificate of title.~~

~~(b) If a secured party assigns all or part of the party's interest in a motor vehicle for which a certificate of title is issued under this chapter, the secured party assigning the interest shall file a copy of the assignment with the department and the department shall record the assignment in the department's records.~~

~~(11)(8) (a) A fee of \$8 must be paid to the department to file any security interest or other lien against a motor vehicle. The \$8 fee includes the cost of filing a satisfaction or release of the security interest and also covers the cost of entering and, upon the subsequent satisfaction or release, of removing the security interest or lien from the electronic record of title on the records of the department and of deleting the endorsement of the security interest from the face of the certificate of ownership. A fee of \$4 must be paid to the department for issuing a certified copy of a certificate of ownership subject to a security interest or other lien on file in the office of the department or for filing an assignment of any security interest or other lien on file with the department. All fees provided for in this section must be paid to the county treasurer.~~

(b) *Beginning January 1, 2002, and ending June 30, 2011, the fee is \$8. Of the \$8 fee, \$4 must be deposited in the state general fund in accordance with 15-1-504. The remaining \$4 must be forwarded to the state treasurer for deposit in the motor vehicle information technology system account provided for in 61-3-550.*

(c) *Beginning July 1, 2011, the fee is \$4 and must be deposited in the state general fund. (Terminates June 30, 2008—sec. 2, Ch. 260, L. 1999.)*

~~**61-3-103. (Effective July 1, 2008) Filing of security interests—perfection—rights—procedure—fees.** (1) The department may not file any voluntary security interest or lien unless it is accompanied by or specified in the application for a certificate of ownership of the vehicle encumbered. If the approved notice form is transmitted to the department, the security agreement or other lien instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, the complete vehicle description, amount of lien, and is signed by the debtor. The department shall file voluntary security interests and liens by entering the name and address of the secured party upon the face of the certificate of ownership. Involuntary liens must be filed against the record of the vehicle encumbered. The department shall mail a statement certifying to the filing of a security interest or lien to the secured party. The department shall mail the certificate of ownership to the owner at the address given on the certificate; however, if the transfer of ownership and filing of the security interest are paid for by a creditor or secured party, the department shall return the certificate of ownership to the county treasurer where the vehicle is to be registered. The owner of a motor vehicle is the person entitled to operate and possess the motor vehicle.~~

~~(2) A security interest in a motor vehicle held as inventory by a dealer licensed under chapter 4 of this title must be perfected in accordance with Title 30, chapter 9A.~~

~~(3) Whenever a security interest or lien is filed against a motor vehicle that is subject to two security interests previously perfected under this section, the department shall endorse on the face of the certificate of ownership, "NOTICE: This motor vehicle is subject to additional security interests on file with the Department of Justice." Other information regarding the additional security interests need not be endorsed on the certificate.~~

~~(4) Satisfactions or statements of release filed with the department under this chapter must be retained by it for a period of 8 years after receipt, after which they may be destroyed.~~

~~(5) Except as provided in subsection (6), a voluntary security interest or lien is perfected on the date the lien notice and the certificate of ownership or manufacturer's statement of origin are delivered to the county treasurer. On that date, the county treasurer shall issue to the secured party a receipt evidencing the perfection. Perfection under this section constitutes constructive notice to subsequent purchasers or encumbrancers, from the date of delivery of the lien notice to the county treasurer, of the existence of the security interest.~~

~~(6) Voluntary security interests or lien filings that do not require transfer of ownership are perfected on the date the lien notice and the certificate of ownership or manufacturer's statement of origin are received by the department. On that date, the department shall issue to the secured party a receipt evidencing the perfection. Perfection under this subsection constitutes~~



constructive notice to subsequent purchasers or encumbrancers, from the date the lien notice is delivered to the department, of the existence of the security interest.

(7) Upon default under a chattel mortgage or conditional sales contract covering a motor vehicle, the mortgagee or vendor has the same remedies as in the case of other personal property. In case of attachment of motor vehicles all the provisions of 27-18-413, 27-18-414, and 27-18-804 are applicable except that deposits must be made with the department.

(8) A conditional sales vendor or chattel mortgagee or assignee who fails to file a satisfaction of a chattel mortgage, assignment, or conditional sales contract within 15 days after receiving final payment is required to pay the department the sum of \$1 for each day that the person fails to file such satisfaction.

(9) Upon receipt of notice of any involuntary liens or attachments against the record of any motor vehicle registered in this state, the department shall within 24 hours mail to the owner, conditional sale vendor, mortgagee, or assignee of any owner, conditional sale vendor, or mortgagee a notice showing the name and address of the lien claimant, amount of the lien, date of execution of lien, and in the case of attachment the full title of the court and the action and the name of the attorneys for the plaintiff and attaching creditor.

(10) It is not necessary to refile with the department any instruments on file in the offices of the county clerk and recorders at the time this law takes effect.

(11) A fee of \$8 must be paid to the department to file any security interest or other lien against a motor vehicle. The \$8 fee must include and cover the cost of filing a satisfaction or release of the security interest and also the cost of entering the satisfaction or release on the records of the department and deleting the endorsement of the security interest from the face of the certificate of ownership. A fee of \$4 must be paid to the department for issuing a certified copy of a certificate of ownership subject to a security interest or other lien on file in the office of the department or for filing an assignment of any security interest or other lien on file with the department. All fees provided for in this section must be paid to the county treasurer. Of the \$8 fee, \$4 must be deposited in the state general fund in accordance with 15-1-504. The remaining \$4 must be forwarded to the state treasurer for deposit in the motor vehicle information technology system account provided for in 61-3-550. (Terminates June 30, 2011—sec. 9, Ch. 394, L. 2001.)

**~~61-3-103. (Effective July 1, 2011) Filing of security interests—perfection—rights—procedure—fees.~~** (1) The department may not file any voluntary security interest or lien unless it is accompanied by or specified in the application for a certificate of ownership of the vehicle encumbered. If the approved notice form is transmitted to the department, the security agreement or other lien instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, the complete vehicle description, amount of lien, and is signed by the debtor. The department shall file voluntary security interests and liens by entering the name and address of the secured party upon the face of the certificate of ownership. Involuntary liens must be filed against the record of the vehicle encumbered. The department shall mail a statement certifying to the filing of a security interest or lien to the secured party. The department shall mail the certificate of ownership to the owner at the address given on the certificate;

however, if the transfer of ownership and filing of the security interest are paid for by a creditor or secured party, the department shall return the certificate of ownership to the county treasurer where the vehicle is to be registered. The owner of a motor vehicle is the person entitled to operate and possess the motor vehicle.

~~(2) A security interest in a motor vehicle held as inventory by a dealer licensed under chapter 4 of this title must be perfected in accordance with Title 30, chapter 9A.~~

~~(3) Whenever a security interest or lien is filed against a motor vehicle that is subject to two security interests previously perfected under this section, the department shall endorse on the face of the certificate of ownership, "NOTICE. This motor vehicle is subject to additional security interests on file with the Department of Justice." Other information regarding the additional security interests need not be endorsed on the certificate.~~

~~(4) Satisfactions or statements of release filed with the department under this chapter must be retained by it for a period of 8 years after receipt, after which they may be destroyed.~~

~~(5) Except as provided in subsection (6), a voluntary security interest or lien is perfected on the date the lien notice and the certificate of ownership or manufacturer's statement of origin are delivered to the county treasurer. On that date, the county treasurer shall issue to the secured party a receipt evidencing the perfection. Perfection under this section constitutes constructive notice to subsequent purchasers or encumbrancers, from the date of delivery of the lien notice to the county treasurer, of the existence of the security interest.~~

~~(6) Voluntary security interests or lien filings that do not require transfer of ownership are perfected on the date the lien notice and the certificate of ownership or manufacturer's statement of origin are received by the department. On that date, the department shall issue to the secured party a receipt evidencing the perfection. Perfection under this subsection constitutes constructive notice to subsequent purchasers or encumbrancers, from the date the lien notice is delivered to the department, of the existence of the security interest.~~

~~(7) Upon default under a chattel mortgage or conditional sales contract covering a motor vehicle, the mortgagee or vendor has the same remedies as in the case of other personal property. In case of attachment of motor vehicles all the provisions of 27-18-413, 27-18-414, and 27-18-804 are applicable except that deposits must be made with the department.~~

~~(8) A conditional sales vendor or chattel mortgagee or assignee who fails to file a satisfaction of a chattel mortgage, assignment, or conditional sales contract within 15 days after receiving final payment is required to pay the department the sum of \$1 for each day that the person fails to file such satisfaction.~~

~~(9) Upon receipt of notice of any involuntary liens or attachments against the record of any motor vehicle registered in this state, the department shall within 24 hours mail to the owner, conditional sale vendor, mortgagees, or assignees of any owner, conditional sale vendor, or mortgagees a notice showing the name and address of the lien claimant, amount of the lien, date of execution of lien, and in the case of attachment the full title of the court and the action and the name of the attorneys for the plaintiff and attaching creditor.~~

~~(10) It is not necessary to refile with the department any instruments on file in the offices of the county clerk and recorders at the time this law takes effect.~~

~~(11) A fee of \$4 must be paid to the department to file any security interest or other lien against a motor vehicle. The \$4 fee must include and cover the cost of filing a satisfaction or release of the security interest and also the cost of entering the satisfaction or release on the records of the department and deleting the endorsement of the security interest from the face of the certificate of ownership. A fee of \$4 must be paid to the department for issuing a certified copy of a certificate of ownership subject to a security interest or other lien on file in the office of the department or for filing an assignment of any security interest or other lien on file with the department. All fees provided for in this section must be paid to the county treasurer for deposit in the state general fund in accordance with 15-1-504.~~

**Section 45. Certificate of title — transaction summary receipt — prima facie evidence.** A certificate of title or transaction summary receipt issued by, or under the authority of, the department is prima facie evidence of the facts appearing on the certificate of title or transaction summary receipt.

**Section 46.** Section 61-3-106, MCA, is amended to read:

**“61-3-106. Report of stolen and recovered motor vehicles — accessibility — insurance fraud and theft reporting — immunity.** (1) ~~It shall be~~ is the duty of the sheriff of ~~every~~ *each* county of the state and of the chief of police or commissioner of police of ~~every~~ *each* city to make an immediate entry regarding each vehicle theft or recovery into the state automated stolen vehicle file maintained by the ~~law enforcement network system (LENS) department on the state's criminal justice information system.~~ Failure on the part of any officer ~~shall be considered to be~~ *to make the immediate entry is considered* misfeasance in office and ~~shall constitute~~ *constitutes* grounds for removal. Upon entry of ~~such~~ *the* information, ~~LENS the state's criminal justice information system~~ and the national crime information center must be allowed immediate access to the state automated stolen vehicle file. ~~It shall also be the duty of LENS to~~ *The department shall* file reports of stolen and recovered motor vehicles reported to it from other states.

(2) The state automated stolen vehicle file must be made available to the secretary of state or other proper official in each state of the United States through access to the national crime information center. ~~Before issuing a certificate of ownership, the department shall check the vehicle identification number on the motor vehicle to be registered against the state automated stolen vehicle file.~~

(3) Upon written request to an insurer by an authorized governmental agency or upon an insurer's own initiative to notify a specific lienholder, an insurer or an agent authorized by an insurer to act on its behalf shall release to the requesting agency or lienholder relevant information in the insurer's possession relating to any specific motor vehicle theft or motor vehicle insurance fraud.

(4) (a) Except as otherwise provided by law, information furnished pursuant to this section is privileged and may not become part of a public record. The evidence or information is not subject to a subpoena duces tecum in a civil or criminal proceeding unless the court determines after reasonable notice to the parties listed in subsection (4)(b) and a hearing that the public interest and any ongoing investigation by the parties listed in subsection (4)(b) will not be jeopardized by compliance with the subpoena duces tecum.

(b) The notice required by subsection (4)(a) must be sent to an insurer, an agent authorized by an insurer to act on its behalf, an authorized governmental agency that has an interest in the information, and a specific lienholder.

(5) An authorized governmental agency provided with information pursuant to this section may release or provide the information to any other authorized governmental agency.

(6) An insurer, an agent authorized by an insurer to act on its behalf, or an employee of an insurer or agent is not subject to civil or criminal liability in any cause of action for releasing or receiving information under this section.

(7) As used in this section, the following definitions apply:

(a) "Authorized governmental agency" means any ~~city~~ constituted criminal investigative department or agency of the United States; the state department of justice; the state auditor's office; a peace officer of the state or a political subdivision of the state; or a prosecuting attorney of any state, of any political subdivision of any state, or of the United States or any district of the United States.

(b) "Relevant information" includes but is not limited to:

(i) insurance policy information related to any motor vehicle theft or motor vehicle insurance fraud under investigation, including an application for a policy;

(ii) available policy premium payment records;

(iii) the history of previous claims made by the insured; and

(iv) information relating to the investigation of any motor vehicle theft or motor vehicle insurance fraud, including statements of any person, proof of loss and notice of loss, and any information that an insurer knows or reasonably believes reveals or may reveal the identity of a person who it has reason to believe committed a criminal or fraudulent act relating to a motor vehicle theft or motor vehicle insurance claim or has knowledge of an act that has not been reported to an authorized governmental agency.

(c) "Specific lienholder" means a person or firm that holds a security interest in a motor vehicle involved in a specific motor vehicle theft or motor vehicle insurance fraud."

**Section 47.** Section 61-3-107, MCA, is amended to read:

**"61-3-107. Identification number for trailers, campers, and other vehicles.** (1) A trailer, semitrailer, house trailer, or camper that does not have a manufacturer's or other identifying number ~~thereon~~ *on the trailer, semitrailer, house trailer, or camper* must be assigned an identification number by the department.

(2) The department may not issue a certificate of ownership *or a certificate of title* or reissue a certificate of ownership *or a certificate of title* covering a vehicle on which the identification number has been altered, removed, obliterated, defaced, omitted, or is otherwise absent unless the owner or other person lawfully in possession of the vehicle files an application with the department, accompanied by a fee of \$5. The application must be on a form provided by the department and must contain information required by the department for the assignment of a special identification number for a vehicle. Upon receipt of the application and if the department is satisfied that the applicant is entitled to the assignment of an identification number, the department shall designate a

special identification number for the vehicle. The department shall note the special identification number on the application and on records to be kept by the department. This assigned identification number must be stamped or securely attached in a conspicuous position on the vehicle in the manner and form prescribed by the department.

(3) ~~In a case where~~ If the true identity of a vehicle can be established by restoring the original manufacturer's serial number or other distinguishing numbers or identification marks, the department may not assign a special identification number and shall replace the vehicle's identification mark by duplicating the manufacturer's full numeric or alphanumeric identification sequence. The department may replace an identification mark only after conducting an inquiry to determine that ownership of the vehicle bearing a restored identification mark has been lawfully transferred to the applicant. The applicant shall apply for and the department shall replace the identification mark on the vehicle as required under subsection (2).

(4) Upon receipt by the department of a certificate of inspection completed by a peace officer or authorized member of the department verifying that the identification number has been stamped or securely attached in a conspicuous position upon the vehicle, accompanied by an application for a certificate of ownership *or a certificate of title* and the required fee, the department shall use the number as the numeric or alphanumeric identification mark for the vehicle in any certificate of ownership *or a certificate of title* that may be issued."

**Section 48.** Section 61-3-109, MCA, is amended to read:

**"61-3-109. (Temporary) Electronic search title, lien filing, and registration.** (1) The department shall *develop and implement* a pilot program ~~allowing to allow:~~

(a) *electronic transmission of data by the department's authorized agent or a county treasurer to or from the department in lieu of the transmission of paper documents;*

(b) *substantiation of electronic record transactions performed by the department, its authorized agent, or a county treasurer;*

(c) ~~the search of electronic search of motor vehicle titles, electronic filing and perfection of liens on motor vehicles, and electronic records of title and registration of motor vehicles~~ *by the department, its agents, and county treasurers;*

(d) *electronic filing, perfection, and release of security interests or liens of record; and*

(e) *certification and audit by the department of its authorized agents.*

(2) The department shall adopt rules to implement the pilot program. The rules must include procedures designed to constitute constructive notice of electronically filed and perfected liens and electronically ~~registered titles maintained ownership records~~ to subsequent purchasers, ~~or encumbrancers secured parties, or lienholders~~ from the date of a lien's perfection or ~~title registration transfer of ownership.~~ (Terminates June 30, 2008 — sec. 2, Ch. 260, L. 1999.)"

**Section 49.** Section 61-3-201, MCA, is amended to read:

**"61-3-201. Transfer of interest Certificate of title required — cancellation of erroneous certificate of ownership or registration exclusions.** (1) ~~Upon a transfer of any interest in a motor vehicle registered~~

~~under the provisions of this chapter, the person whose interest is to be transferred shall sign the certificate of ownership issued for the vehicle in the appropriate space provided, and the signature must be acknowledged before the county treasurer, a deputy county treasurer, an elected official authorized to acknowledge signatures, an employee of the department, or a notary public.~~

~~(2) Within 20 calendar days after endorsement, the transferee shall forward both the endorsed certificate of ownership with the odometer mileage statement required under 61-3-206 and the certificate of registration, together with the information required under 61-3-202, to the county treasurer, who shall forward them to the department. The department may not issue a certificate of ownership or certificate of registration until the outstanding certificates are surrendered to that office or their loss is established to its reasonable satisfaction. Failure to make application within the 20-day grace period subjects the transferee to a penalty of \$10. The county treasurer shall collect the penalty at the time of registration and forward the penalty fee to the department of revenue for deposit in the state general fund. The penalty is in addition to the fees otherwise provided by law. If the transferee does not make application within 25 days, a creditor or secured party may pay the fees for the transfer of title and filing of security interest or lien in order to have title transferred to the transferee and have the security interest or lien filed. The creditor or secured party is not liable for the penalty, registration fees, or taxes. The department shall return the certificate of title to the county treasurer as provided in 61-3-103(1). When the certificate of ownership is returned by the department to the county treasurer, the treasurer shall hold the certificate of ownership until the vehicle is properly registered.~~

~~(3) In the event of a transfer by operation of law of any interest in a motor vehicle as upon inheritance, devise, or bequest, order in bankruptcy or insolvency, execution sale, repossession upon default in the performance of the terms of a lease or executory sales contract, or otherwise than by voluntary act of the person whose title or interest is transferred, the executor, administrator, receiver, trustee, sheriff, or other representative or successor in interest of the person whose interest is transferred shall forward to the department an application for a certificate of ownership in the form required by the department, together with a verified or certified statement of the transfer of interest. The statement must set forth the reason for the involuntary transfer, the interest transferred, the name of the person to whom the interest is to be transferred, the process of procedure effecting the transfer, and other information requested by the department. Evidence and instruments otherwise required by law to effect a transfer of legal or equitable title to or an interest in chattels must be furnished with the statement. If the department is satisfied that the transfer is regular and that all formalities required by law have been complied with, it shall send to the owner, conditional sales vendor, lessor, mortgagee, and other lienor, as shown by its records, notice of the intended transfer and, not less than 5 days after sending notice, shall issue a new certificate of ownership and certificate of registration to the transferee. The notice required by this section is complied with by deposit in the U.S. mail of the notice, postage prepaid, addressed to the person at the respective address shown on its records.~~

~~(4) When the vehicle certificate of ownership that is involuntarily transferred is not registered in this state, the procedure in subsection (3) must be followed in applying for a new certificate of ownership and certificate of registration. However, in lieu of the statement required in subsection (3), the~~

~~department may accept an affidavit of repossession on the form provided by the state in which a lien has been perfected and the department need not send notice of intended transfer and shall issue a new certificate of ownership and a new certificate of registration to the person entitled to the certificates.~~

~~(5) (a) If the owner of one or more motor vehicles, trailers, semitrailers, or housetrailer registered under this chapter and not exceeding a combined value of \$15,000 dies without leaving other property necessitating the procuring of letters of administration or letters testamentary, the surviving spouse or other heir unless the property is by will otherwise bequeathed may secure transfer of the decedent's certificate of ownership and the certificate of registration for the vehicle.~~

~~(b) The person seeking transfer of the certificate of ownership shall file an affidavit with the department setting forth the fact of survivorship and the name and address of any other heirs and other facts as are necessary under subsection (5)(a) to entitle the affiant to a transfer.~~

~~(c) The department is authorized to transfer the certificate of ownership and certificate of registration, subject to all security interests shown by its records, upon receipt of an affidavit showing that the affiant is entitled to a transfer under the provisions of subsection (5)(a).~~

~~(6) Subsection (5) does not prevent a secured party from assigning the secured party's interest in a motor vehicle registered under the provisions of this chapter to any other person without the consent of and without affecting the interest of the holder of the certificate of ownership and certificate of registration. Upon any assignment by a secured party of the secured party's security interest in any motor vehicle registered under this chapter, a copy of the assignment must be filed with the department and a record of the assignment must be made in its records.~~

~~(1) Except as provided in subsection (2), the owner of a motor vehicle that is in this state and for which a certificate of title has not been issued by or an electronic record of title has not been created by the department shall apply to the department, its authorized agent, or a county treasurer for a certificate of title for the motor vehicle.~~

~~(2) The following vehicles are exempt from the requirements of this part:~~

~~(a) a vehicle owned by the United States, unless the vehicle is registered in this state;~~

~~(b) a vehicle that is:~~

~~(i) owned by a manufacturer, a dealer, a wholesaler, or an auto auction; and~~

~~(ii) held for sale, even though incidentally moved on the highway, used for purposes of testing or demonstration, or used solely by a manufacturer for testing;~~

~~(c) a vehicle owned by a nonresident of this state;~~

~~(d) a vehicle regularly engaged in the interstate transportation of person or property and:~~

~~(i) for which a currently effective certificate of title has been issued in another state or jurisdiction; or~~

~~(ii) that is properly registered under the provisions of Title 61, chapter 3, part 7;~~

~~(e) a vehicle moved solely by human or animal power;~~

(f) *an implement of husbandry;*

(g) *special mobile equipment;*

(h) *a self-propelled wheelchair or tricycle used by a person with a disability;*  
or

(i) *a dolly or converter gear.*

~~(7)~~(3) The certificate of ~~ownership~~ *title* is valid until canceled by the department upon a transfer of any interest shown in the certificate of *title*, and annual renewal is not needed.

~~(8)~~(a) Upon its determination that a certificate of ownership or a registration receipt contains an error or that the applicant has paid the required fees and taxes with an insufficient funds check and if the department has been notified of that fact by the county attorney, the department may cancel the certificate of ownership or receipt and, in the case of an error, issue a replacement for the erroneous certificate or receipt if the owner has returned the certificate or receipt to be canceled. If the owner fails to return to the department the certificate of ownership, the registration receipt, or the license plate, the department shall direct a peace officer or department employee to secure and return the certificate, receipt, or license plate to the department.

(b) Any person who fails to return a certificate of ownership or a registration receipt that contains an error or that has been canceled by the department because of an insufficient funds check, as provided in subsection (8)(a), after receiving actual notice of the department's demand for the return of the certificate or receipt, as required by subsection (8)(a), is guilty of a misdemeanor and upon conviction may be fined an amount not to exceed \$500."

**Section 50.** Section 61-3-202, MCA, is amended to read:

**"61-3-202. Certificate of ownership title — issuance — contents — joint ownership — inspection — fees.** (1) Upon completion of the application for certificate of ownership, on forms furnished by the department, the county treasurer shall forward one copy of the application to the department, which shall enter the information contained in the application upon the corresponding records of its office and, except as provided in 61-3-103(1) and 61-3-201(2) concerning applications by creditors or secured parties, shall furnish the applicant a certificate of ownership subject to the provisions of 61-3-103.

~~(2)~~(1) The A certificate of ~~ownership~~ *title* issued by the department must contain upon the face thereof:

(a) the date issued;

(b) the name and ~~mailing and residence~~ address of the owner or the names and addresses of joint owners;

(c) *the mileage disclosed by the transferor when ownership of the vehicle was transferred, including a notation that the record mileage is actual, not actual, or exceeds mechanical limits;*

~~(e)~~(d) ~~except as provided in 61-3-103,~~ the name and complete address of any holder of a perfected security interest in the registered vehicle each secured party and lienholder, in the order of priority and perfection or, if the application was based on a surrendered certificate of title, in the order that the names and addresses are shown on the certificate of title;

~~(d)~~ a description of the registered vehicle, including the year built and vehicle identification number;



~~(e) except as provided in 61-3-103, the filing date of any lien against such motor vehicle; and~~

~~(e) the title number assigned to the vehicle;~~

~~(f) the name of the jurisdiction in which the vehicle owner resides; the words "certificate of title"; the vehicle identification number; the manufacturer's designated model year of manufacture, make, and model of the vehicle; and any required or carried-forward brands;~~

~~(g) the unique transaction record number, if available and assigned by the department; and~~

~~(h) such other statement of facts as may be determined by any other data that the department prescribes.~~

(2) A certificate of title issued by the department is valid until canceled by the department upon:

(a) a transfer, in the electronic record, of title of any ownership interest shown in the certificate of title;

(b) notice received by the department of the surrender of the certificate of title to a motor vehicle title issuing agency of another jurisdiction for an issuance of a title in that jurisdiction;

(c) the issuance of a duplicate certificate of title; or

(d) a determination by the department that the certificate of title contains a substantial error or that the person who requested issuance of the certificate of title paid the required fees and taxes with an insufficient funds check.

(3) (a) Whenever the conditions described in subsection (2)(d) occur, the department shall:

(i) give prompt written notice of the cancellation of the certificate of title to any owner, secured party, or lienholder of record; and

(ii) stop any change to the electronic record of title.

(b) The action taken by the department under subsection (3)(a) prevents the transfer of any ownership interest until the error is corrected or the fees and taxes have been paid.

~~(3)(4) When~~ If the names and addresses of more than one owner ~~who are members of the same immediate family~~ are listed on the certificate of ownership title, joint ownership with right of survivorship, and not as tenants in common, is presumed.

~~(4) Upon receipt of the application, the department shall recheck the application. If there is any error in the application, it may be returned to the owner or to the county treasurer to effectively secure the correction of such error, who shall return the same to the department.~~

~~(5) The certificate of ownership shall contain a notice to the department of a transfer of interest of the owner and such other statements as may be determined by the department.~~

(6) A salvage vehicle for which a certificate of ownership is sought must be inspected for the vehicle identification number to authenticate the identity of the vehicle before a certificate of ownership can be issued. The inspection may not attest to the roadworthiness or safety condition of the vehicle and must be performed by department employees or peace officers designated by the department.

~~(7) The department may contract with a person or entity for use of a facility as a regional inspection site for salvage vehicles.~~

~~(8) To defray the cost of the vehicle inspection program, the department shall collect a fee of \$18.50 for the inspection of each salvage vehicle for which a certificate of ownership is sought. The fee must be distributed as follows:~~

~~(a) A portion of the inspection fee for each salvage vehicle must be remitted by the department to the state treasurer for deposit in the general fund.~~

~~(b) A portion of the inspection fee for each salvage vehicle must be remitted by the department to the inspection site that has contractually permitted the use of its facility for the inspection.~~

~~(9) (a) An authorized inspector may seize and hold a vehicle:~~

~~(i) the inspector has probable cause to believe is stolen;~~

~~(ii) on which a motor number or vehicle identification number has been defaced, altered, removed, covered, destroyed, or obliterated; or~~

~~(iii) that does not conform with the vehicle identification number on the certificate of ownership.~~

~~(b) A seized vehicle may be held until the identity of the vehicle is established and arrangements are made for its lawful disposition. An authorized inspector may use any means necessary to identify a vehicle by its vehicle identification number or numbers.~~

~~(10) The department may not issue a certificate of ownership for a vehicle until the identity of the vehicle is established.~~

~~(11) The department may adopt rules for the implementation and administration of the vehicle inspection program."~~

**Section 51.** Section 61-3-203, MCA, is amended to read:

**"61-3-203. Fee for original certificate of ownership and transfer of registration title — disposition.** A charge person applying for a certificate of title shall pay a fee of \$5 ~~must be made~~ for issuance of an original certificate of ownership of title. ~~and for a transfer of registration, which~~ The fee must be collected by the county treasurer or by an authorized agent of the department at the time of application. An additional fee of \$2 must be paid for light vehicles, trucks and buses weighing less than 1 ton, and logging trucks. The fees must be deposited in the state general fund."

**Section 52.** Section 61-3-204, MCA, is amended to read:

**"61-3-204. ~~Lost certificates~~ Replacement certificate of title — application.** ~~(1) In the event any~~ If a certificate of ownership title is lost, stolen, destroyed, mutilated, or becomes illegible, or if the owner wants to update personal information on the electronic record of title or have a replacement certificate of title issued with updated information, the owner shall immediately ~~make application for and obtain, as shown on the electronic record of title, may apply for and request the department to issue a duplicate thereof, upon furnishing replacement certificate of title.~~ The application must include satisfactory evidence of such the facts requiring the replacement certificate of title and ~~upon payment of~~ be accompanied by a fee of ~~\$3~~ \$5. Revenue from this fee must be deposited in the general fund.

~~(2) Each replacement certificate of title issued by the department must contain the following statement:~~

~~"This replacement voids any previously issued title."~~

**Section 53.** Section 61-3-205, MCA, is amended to read:

**“61-3-205. Transfer of ownership of vehicles by insurance company.**

(1) When an insurance company or its adjuster has taken possession of a motor vehicle as a result of settling an insurance claim and transfers ownership of the motor vehicle, it shall deliver to the transferee at the time of transfer a certificate of ~~ownership~~ *title* signed and acknowledged by the registered owner or owners before the county treasurer, a deputy county treasurer, or a notary public.

(2) If the certificate of ~~ownership~~ *title* names one or more holders of a perfected security interest in the motor vehicle, the insurance company or its adjuster shall also secure and deliver to the transferee a release from the secured party of the security interest.”

**Section 54.** Section 61-3-206, MCA, is amended to read:

**“61-3-206. Odometer disclosure requirements on transfer of vehicle — dealer to preserve record.**

(1) Except as provided in subsection (3), before executing any transfer of ownership document relating to a motor vehicle, each seller of a motor vehicle shall record on the certificate of ~~ownership~~ *title* the odometer reading at the time of transfer or, if the certificate of ~~ownership~~ *title* does not provide for the recording of the odometer reading, furnish to the purchaser a written statement that is signed by the seller, who shall also print the seller's name on the written statement, and that contains the following information:

- (a) the odometer reading at the time of transfer;
- (b) the date of transfer;
- (c) the seller's name and current address;
- (d) the purchaser's name and current address;
- (e) the vehicle year, make, model, body style, and identification number;
- (f) one of the following statements or certification:

(i) a certification by the seller that, to the best of the seller's knowledge, the odometer reading reflects the actual miles or kilometers the vehicle has been driven;

(ii) if the seller knows that the odometer reading reflects the amount of mileage in excess of the designed mechanical odometer limit of 99,999 miles or kilometers, the seller shall include a statement to that effect; or

(iii) if the seller knows that the odometer reading differs from the number of miles or kilometers the vehicle has actually traveled and that the difference is greater than that caused by odometer calibration error, the seller shall include a statement that the odometer reading is not the actual mileage and should not be relied upon.

(2) The purchaser shall acknowledge receipt of the disclosure statement by signing it and printing the purchaser's name on the disclosure statement.

(3) The seller of the following types of motor vehicles need not disclose the odometer reading of the vehicle as required in subsection (1):

- (a) a motor vehicle that is 10 years old or older;
- (b) a vehicle that is not self-propelled;
- (c) a new motor vehicle transferred between dealers or wholesalers prior to its first retail sale, unless the vehicle has been used as a demonstrator;

(d) a vehicle having a gross weight rating of more than 16,000 pounds; or

(e) a vehicle sold directly by the manufacturer to an agency of the United States.

(4) A dealer or wholesaler licensed under chapter 4 of this title shall create a record of the information required in subsection (1) and shall maintain and preserve that record for at least 5 years after the date of sale of the motor vehicle to which the information pertains.”

**Section 55.** Section 61-3-207, MCA, is amended to read:

**“61-3-207. Mobile home or housetrailer — transfer of interest.** (1) Upon a transfer of any interest in a mobile home or housetrailer under the provisions of this chapter, the application for the transfer must be made through the county treasurer’s office in the county in which the mobile home or housetrailer is located at the time of the transfer. The county treasurer may not accept the application unless all taxes, interest, and penalties that have been assessed on the mobile home or housetrailer have been paid in full.

(2) When a mobile home or housetrailer is sold under contract or under conditions that title is not immediately conveyed, the parties to the transaction shall immediately file with the county clerk and recorder a notice of intention to transfer title. The notice must indicate the name of the party who is responsible for payment of taxes upon the mobile home or housetrailer after the transfer. The clerk and recorder shall immediately notify the department of revenue of the information in the notice. The penalty provisions of ~~61-3-201(2)~~ [section 9] do not apply if the notice of intent to transfer is filed with the county clerk and recorder within 20 days after the transfer.”

**Section 56.** Section 61-3-208, MCA, is amended to read:

**“61-3-208. Affidavit and bond for certificate of title.** (1) If an applicant for a vehicle certificate of title cannot provide the department with a ~~the~~ certificate of title ~~transferred that assigns the prior owner’s interest in the vehicle to the applicant, the department may issue a certificate of title for the vehicle if the applicant furnishes an affidavit in a form prescribed by the department if subsection (2) is complied with.~~

(2) (a) The applicant shall submit an affidavit in a form prescribed by the department that must be signed and sworn to before an officer authorized to administer oaths and affirmations. The affidavit must accompany the application for the certificate of title and ~~include~~ must:

~~(a)(i) include the facts and circumstances through which the applicant acquired ownership and possession of the vehicle;~~

~~(b)(ii) information as required by the department to enable it to determine what disclose security interests, liens, and or encumbrances, if any, that are known to the applicant and that are outstanding against the vehicle;~~

~~(c) the date and the amount secured by the security interests, liens, and encumbrances, if any; and~~

~~(d)(iii) a statement state that the applicant has the right to have a certificate of title issued.~~

(b) The application must satisfy one of the following conditions:

(i) The vehicle for which the application is being made must be a boat, personal watercraft, sailboat 12 feet in length or longer, or a snowmobile, and the

loss of the certificate of title must be established by the applicant to the department's satisfaction.

(ii) The applicant shall certify in the affidavit that the value of the vehicle for which the application is made is \$500 or less as indicated by

~~(3) If after examination of the application, affidavit, and any other evidence the department determines that a certificate of title for the vehicle should be issued to the applicant, the department shall require the applicant to file with the department a good and sufficient bond before issuing the certificate of title. The bond must be:~~

~~(a) in an amount equal to the average trade-in or wholesale value of the vehicle as determined by the applicable national appraisal guide for the vehicle as of January 1 for the year in which the application for certificate of title is made. When or, if a national appraisal guide is not available for a vehicle, the department shall determine an alternative value for the vehicle, according to the applicant's knowledge and belief.~~

~~(b)(iii) The applicant shall provide a bond, in a form prescribed by the department, issued by a surety company authorized to do business in this state, in an amount equal to the value of the vehicle for which the application is being made, as determined by the surety company. The bond is conditioned to indemnify a prior owner, lienholder, subsequent purchaser, secured creditor, or encumbrancer of the motor vehicle and any respective successors in interest against expenses, losses, or damages, including reasonable attorney fees, caused by the issuance of the certificate of title or by a defect in or undisclosed security interest upon the right, title, and interest of the applicant in the vehicle; and~~

~~(c) issued by a surety company authorized to do business in the state.~~

~~(4)(3) Any interested person has a right of action to recover on the bond furnished under this section for a breach of its conditions, but the aggregate liability of the surety to all persons may not exceed the amount of the bond.~~

~~(5)(4) Unless the department has been notified of a pending action to recover the bond furnished under this section, the department shall return the bond at the earlier of:~~

~~(a) 3 years from the date of issuance of the certificate of title; or~~

~~(b) the date of surrender of the valid certificate of title to the department if the vehicle is no longer registered required to have a certificate of title in this state."~~

**Section 57.** Section 61-3-210, MCA, is amended to read:

**"61-3-210. Definitions.** As used in this part, the following definitions apply:

(1) "Cab" means the passenger compartment of a common truck or pickup truck. It is a unit of construction that includes the top or roof and the cowl and may or may not include glass, instrumentation, the steering column, and a seat or seats.

(2) "Center structure" includes the section of either a unibody or frame-type passenger vehicle that consists of a unit of sheet metal that extends from the firewall to the back of the rear seat or the centerline of the rear wheels. The structure may comprise the roof, side and rear window posts, cowl panel, dash panel, floor pans, doors, and rocker panels if two or more of these parts are assembled together as one unit.

(3) "Component part" means the front-end assembly, center structure, or tail section of an automobile, the cab of a truck, the bed of a 1-ton or lighter truck, the frame of a vehicle, or any part of a vehicle that contains a vehicle identification number or a derivative of a vehicle identification number.

(4) "Frame" means the structure that supports the automobile body and other external component parts.

(5) "Front-end assembly" includes the hood, right front and left front fenders, grill, bumper, and radiator supports if two or more of these parts are assembled together as one unit forward of the firewall.

(6) "Salvage certificate" means a certificate of ~~ownership~~ *title* issued by the department for a salvage vehicle that may be used to retitle the vehicle.

(7) "Salvage vehicle" means a vehicle damaged by collision, fire, flood, accident, trespass, or other occurrence to the extent that the owner, an insurer, or other person acting on behalf of the owner determines that the cost of parts and labor makes it uneconomical to repair the vehicle.

(8) "Salvage vehicle purchaser" means a person, other than an insurer, who purchases or otherwise obtains possession of a salvage vehicle.

(9) "Tail section" includes the floor pan, right rear and left rear quarter panels, deck lid, upper rear and lower rear panels, and rear bumper if two or more of these parts are assembled together as one unit.

(10) "Vehicle identification number" means the number, letters, or combination of numbers and letters assigned by the manufacturer, by the department, or in accordance with the laws of another state or country for the purpose of identifying the vehicle or a component part of the vehicle."

**Section 58.** Section 61-3-211, MCA, is amended to read:

**"61-3-211. Surrender of certificate of ~~ownership~~ *title* — issuance of salvage certificate — salvage retitling requirements.** (1) An insurer acquiring ownership of a vehicle that is less than 5 years of age that ~~he~~ *the insurer* determines to be a salvage vehicle shall surrender the certificate of ~~ownership~~ *title* to the department within 15 days after acquiring the certificate of *title*. If the insurer has not sold the salvage vehicle prior to the time of surrendering the certificate of ~~ownership~~ *title*, the insurer shall apply for a salvage certificate on a form prescribed by the department. If the certificate of ~~ownership~~ *title* names one or more holders of a perfected security interest in the vehicle, the insurer shall secure and deliver to the department a release from each secured party of the secured interest.

(2) Upon receipt of a properly executed certificate of ~~ownership~~ *title* and a salvage certificate application from an insurer, the department shall issue a salvage certificate to the insurer within 5 working days of the date of receipt of the application. Upon receipt of a salvage certificate issued by the department, an insurer may possess, retain, transport, sell, transfer, or otherwise dispose of the salvage vehicle. The salvage certificate is prima facie evidence of ownership of a salvage vehicle.

(3) If the insurer sells a salvage vehicle within the 15-day period established in subsection (1) prior to surrendering the certificate of ~~ownership~~ *title*, the insurer shall complete a salvage receipt on a form prescribed by the department. The insurer shall deliver the original salvage receipt to the salvage vehicle purchaser only after obtaining a clear title and lien release. Prior to disposing of the salvage vehicle, the salvage vehicle purchaser shall apply for a salvage

certificate by completing the salvage receipt and submitting it to the department. The insurer shall deliver a copy of the salvage receipt with the surrendered certificate of ~~ownership title~~ to the department. Upon receipt of the certificate of ~~ownership title~~ from the insurer and the application from the salvage vehicle purchaser, the department shall issue a salvage certificate to the salvage vehicle purchaser that is prima facie evidence of ownership.

(4) If an insurer determines that a salvage vehicle will remain with the owner after an agreed settlement, the insurer shall notify the department of the settlement on a form prescribed by the department. Upon receipt of the notice, the department may require the owner to surrender the certificate of ~~ownership title~~ in compliance with this part, regardless of whether ownership of the salvage vehicle was obtained in a jurisdiction not requiring the surrender of the certificate of ~~ownership title~~ or a comparable ownership document.

(5) At the time of surrender of a certificate of ~~ownership title~~ for a salvage vehicle not acquired by an insurer, the department shall issue a salvage certificate to the owner. Upon receipt of a salvage certificate issued by the department to a noninsurer, the owner may possess, retain, transport, sell, transfer, or otherwise dispose of the salvage vehicle. A salvage certificate is prima facie evidence of ownership of a salvage vehicle.

(6) A fee of \$5 must be paid to the department for the issuance of a salvage certificate.

(7) A salvage vehicle owned by or in the inventory of a motor vehicle wrecking facility on October 1, 1991, is exempt from the provisions of this section if the owner of the facility has complied with the provisions of 75-10-513(2)."

**Section 59.** Section 61-3-212, MCA, is amended to read:

**"61-3-212. Retitling salvage vehicles — penalty.** (1) Prior to operating a salvage vehicle on the roads and highways of this state, the owner shall present the vehicle and the salvage certificate, if one has been issued, or the certificate of ~~ownership title~~, the appropriate receipts or bills of sale establishing ownership, and the source of component parts used to rebuild the vehicle to a department employee or designated peace officer for inspection ~~at a regional inspection site authorized under 61-3-202(7), as provided in [section 12].~~ An owner may obtain a 72-hour temporary registration permit from the department or its designee for the purpose of moving a salvage vehicle to and from the designated inspection site.

(2) (a) The inspector shall inspect the vehicle to verify the identity of the vehicle.

(b) The inspector shall verify that the component parts used to rebuild the vehicle are evidenced by traceable receipts or bills of sale and that there are no indications that the vehicle or any of its parts are stolen. Documentation provided by the owner or employee of a wrecking facility licensed under the provisions of Title 75, chapter 10, part 5, is prima facie evidence of the facts stated in the documentation.

(3) Following inspection and prior to operating the vehicle on the roads and highways of this state, the owner shall apply for a new certificate of ~~ownership title~~ by submitting the application, the salvage certificate, receipts or bills of sale, and a copy of the inspection report to the department.

(4) Upon receipt of the application, required documentation, and payment of the fee ~~for a salvage vehicle required in 61-3-202(8)~~ 61-3-203, the department

shall issue a new certificate of ~~ownership~~ *title* with the words "rebuilt salvage" on the face of the certificate *of title*.

(5) A person failing to comply with the provisions of this part is guilty of a misdemeanor and upon conviction shall be fined an amount not to exceed \$500. The salvage vehicle purchaser shall produce the salvage certificate upon request of a public official legally entitled to request the certificate. A person may not operate or use a salvage vehicle on the roads or highways of this state except when a *temporary registration* permit has been issued *as provided in subsection (1)*."

**Section 60.** Section 61-3-303, MCA, is amended to read:

~~"61-3-303. Application for registration~~ **Registration — process — fees.** (1) ~~Each owner of A Montana resident who owns a motor vehicle operated or driven upon the public highways of this state shall for each register the motor vehicle owned, except as otherwise provided in this section, file in the office of the county treasurer in the county where the owner permanently resides at the time of making the application or, if the vehicle is owned by a corporation or used primarily for commercial purposes, in the taxing jurisdiction of the county where the vehicle is permanently assigned an application for registration or reregistration on a form prescribed by the department. The application must contain:~~

~~(a) the name and address of the owner, giving the county, school district, and town or city within whose corporate limits the motor vehicle is taxable, if taxable, or within whose corporate limits the owner's residence is located if the motor vehicle is not taxable;~~

~~(b) the name and address of the holder of any security interest in the motor vehicle;~~

~~(c) a description of the motor vehicle, including make, year model, engine or serial number, manufacturer's model or letter, gross weight, declared weight on all trucks for which the manufacturer's rated capacity is 1 ton or less, and type of body and, if a truck, the manufacturer's rated capacity;~~

~~(d) the declared weight on all trailers operating intrastate, except travel trailers or trailers and semitrailers registered as provided in 61-3-711 through 61-3-733;~~

~~(e) a space in which the person registering the vehicle may indicate the person's desire to donate \$1 or more to promote awareness and education efforts for procurement of organ and tissue donations for anatomical gifts; and~~

~~(f) other information that the department may require.~~

(2) (a) *Except as provided in subsection (3), the county treasurer shall register any vehicle for which:*

*(i) as of the date that the vehicle is to be registered, the owner delivers an application for a certificate of title to the department, its authorized agent, or a county treasurer; or*

*(ii) the county treasurer confirms that the department has an electronic record of title for the vehicle as provided under 61-3-101.*

*(b) To register a vehicle, the county treasurer shall update the electronic record of title maintained by the department under 61-3-101 by entering the fees paid and recording any changes to the recorded data.*



(3) (a) A county treasurer shall register a motor vehicle for which a certificate of title and registration were issued in another jurisdiction and for which registration is required under 61-3-701 after the county treasurer examines the current out-of-jurisdiction registration certificate or receipt and receives payment of the fees required in 61-3-701. The county treasurer may ask the vehicle owner to provide additional information, prescribed by the department, to ensure that the electronic record of registration maintained by the department is complete.

(b) A county treasurer may register a motor vehicle for which the new owner cannot present the previously issued certificate of title only as authorized by the department under 61-3-342.

(4) The department or the county treasurer shall determine the amount of fees, including local option taxes or fees, to be collected at the time of registration for each light vehicle subject to a registration fee under 61-3-560 through 61-3-562 and for each bus, truck having a manufacturer's rated capacity of more than 1 ton, and truck tractor subject to a fee in lieu of tax under 61-3-529. The county treasurer shall collect the registration fee, other appropriate fees, and local option taxes or fees, if applicable, on each motor vehicle at the time of its registration.

~~(2)~~(5) A person who ~~files an application for registration or reregistration of~~ seeks to register a motor vehicle, except of a mobile home or a manufactured home as those terms are defined in 15-1-101(1), shall ~~upon the filing of the application~~ pay to the county treasurer:

(a) the registration fee, as provided in 61-3-311 and 61-3-321 or 61-3-456;

(b) except as provided in 61-3-456 or unless it has been previously paid, the motor vehicle fees in lieu of tax or registration fees under 61-3-560 through 61-3-562 imposed against the vehicle for the current year of registration and the immediately previous year; and

(c) a donation of \$1 or more if the person has indicated on the application that the person wishes to donate to promote awareness and education efforts for procurement of organ and tissue donations in Montana to favorably impact anatomical gifts.

~~(3)~~(6) The ~~application may not be accepted by the~~ county treasurer may not issue a registration receipt or license plates for the vehicle to the owner unless the owner makes the payments required by subsection ~~(2)~~ (5) ~~accompany the application~~. Except as provided in 61-3-560 through 61-3-562, the department may not assess or impose and the county treasurer may not collect taxes or fees for a period other than:

(a) the current year; and

(b) the immediately previous year if the vehicle was not registered or operated on the highways of the state, regardless of the period of time since the vehicle was previously registered or operated.

~~(4)~~(7) The department may make full and complete investigation of the registration status of the vehicle. ~~An applicant for registration or reregistration shall submit proof from appropriate records of the proper county at the request of the department. A person seeking to register a motor vehicle under this section shall provide additional information to support the registration to the department, if requested.~~

(5)(8) Revenue that accrues from the voluntary donation provided in subsection (2)(c) (5)(c) must be forwarded by the respective county treasurer for deposit in the state special revenue fund to the credit of an account established by the department of public health and human services to support activities related to awareness and education efforts for procurement of organ and tissue donations for anatomical gifts.”

**Section 61.** Section 61-3-311, MCA, is amended to read:

**“61-3-311. Time for making application Registration — annual renewal — time periods.** (1) ~~Registration~~ Except as provided in 61-3-562, vehicle registration must be renewed annually, and ~~license~~ registration fees must be paid annually. Except as provided in 61-3-313 through 61-3-316, 61-3-318, 61-3-526, and 61-3-721, all registrations expire on December 31 of the year in which they are issued and ~~application for registration or reregistration must be filed with~~ must be renewed annually upon payment of all required fees to the county treasurer or the department’s agent not later than February 15 of each year. If the ownership of a motor vehicle is transferred during the registration year, the new owner shall apply for a certificate of title and register the motor vehicle ~~must be reregistered and relicensed~~ as provided by statute this chapter.

(2) The department, its authorized agent, or a county treasurer may not renew the registration of a vehicle whose ownership has been transferred and that was originally registered under the provisions of 61-3-342(3), unless:

(a) the previously issued certificate of title has been surrendered to the department, its authorized agent, or the county treasurer and the process for issuing a certificate of title has been completed; or

(b) the person to whom ownership of the vehicle has been transferred presents an affidavit and bond in support of the application for a certificate of title as permitted in 61-3-208.”

**Section 62.** Section 61-3-312, MCA, is amended to read:

**“61-3-312. Renewal of registration — exceptions — grace period.** (1) Except as provided in 61-3-314, 61-3-318, 61-3-526, and 61-3-721, the registration of a vehicle ~~registration~~ under this chapter expires on December 31 of each year and must be renewed annually upon ~~application and~~ payment of ~~license~~ registration fees as provided in 61-3-303 and 61-3-321. The renewal takes effect on January 1 of each year. ~~The certificate of~~ A registration receipt is valid only during the registration year for which it is issued.

(2) The owner of a vehicle registered under the provisions of this section may operate the vehicle between January 1 and February 15 without displaying the registration ~~certificate~~ decal of the current year if, during the period, the owner displays upon the vehicle the number plates or plate assigned for the previous year.”

**Section 63.** Section 61-3-317, MCA, is amended to read:

**“61-3-317. New registration required for transferred vehicle — grace period — penalty — display of proof of purchase.** (1) Except as otherwise provided in this section, the new owner of a transferred motor vehicle has a grace period of 20 calendar days from the date of purchase to make application for a certificate of title and pay the registration fees, fees in lieu of tax and other fees required by part 5 of this chapter, and local option taxes, if applicable, unless the fees and taxes have been paid for the year or for the

24-month period as provided in 61-3-315, as if the vehicle were being registered for the first time in that registration year.

(2) If the motor vehicle was not purchased from a licensed motor vehicle dealer as provided in this chapter, it is not a violation of this chapter or any other law for the purchaser to operate the vehicle upon the streets and highways of this state without a ~~certificate of current registration receipt or registration decal~~ during the 20-day period, ~~provided that if~~ at all times during that period, a ~~vehicle purchase sticker in a form prescribed and furnished by the department~~ *temporary registration permit*, obtained from the county treasurer or a law enforcement officer as authorized by the department, ~~reciting the date of purchase~~ is clearly displayed in the rear window of the motor vehicle *or, if a durable placard has been issued for the vehicle, the placard is attached to the rear of the vehicle.*

(3) Registration and license fees collected under 61-3-321 are not required to be paid when a license plate is transferred under 61-3-335 and this section.

(4) Failure to make application *for a certificate of title* within the time provided in this section subjects the purchaser to a penalty of \$10. The penalty must be collected by the county treasurer at the time of registration and is in addition to the fees otherwise provided by law. The penalty must be deposited in the state general fund."

**Section 64.** Section 61-3-322, MCA, is amended to read:

**~~61-3-322. Certificates of registration~~ *Registration receipts — issuance.*** (1) Upon completion of the ~~application for registration on forms furnished by the department, the county treasurer shall file one copy in the treasurer's office and issue to the applicant two copies of the application marked "Owner's Certificate of Registration and Payment Receipt", one of which must be marked "file copy"~~ *registration process, the county treasurer shall issue a registration receipt to the owner of the vehicle.*

(2) ~~The certificate of registration receipt must contain upon the face of the certificate the information described in 61-3-202~~ *(2) the name and address of the vehicle owner, the license plate number assigned to the vehicle, sufficient information to identify the registered vehicle and determine its registration date and period of registration, and any additional information required by rule.*

(3) ~~The registration receipt, a photostatic copy of the receipt acknowledged by the county treasurer or a deputy county treasurer, a notarized photostatic copy, or a duplicate furnished by the department must at all times be carried in the vehicle to which it refers or must be carried by the person driving or in control of the vehicle, who shall display it upon demand of a police peace officer or any officer or employee of the department or the transportation department.~~

(4) ~~The county treasurer shall daily forward to the department one copy of all applications for registration received that day.~~

(5) ~~It is not necessary for the county treasurer to segregate the amount of taxes or fees for state, county, school district, and municipal purposes in the receipt."~~

**Section 65.** Section 61-3-342, MCA, is amended to read:

**~~61-3-342. Temporary window sticker registration permit — validity — expiration.~~** (1) Any purchaser of a motor vehicle who is unable to fully complete the process of applying for a ~~Montana certificate of title at the time he makes application for registration or reregistration of the vehicle because the~~

~~previously issued certificate of ownership title is lost, in the possession of third parties, or in the process of reissuance in this state or elsewhere, or subject to a disputed, preexisting security interest may, upon making affidavit to that effect upon a form prescribed by the department and upon the payment of all applicable registration fees and taxes, plus an additional fee of \$2 to be collected by the county treasurer and remitted to the department, obtain a temporary registration permit from the county treasurer. of the county in which the vehicle is to be registered a temporary window sticker of such size, color, and design as the department may prescribe, to be validated. The temporary registration permit, when issued by the county treasurer, is valid for a period of 60 days from the date of issuance. The purchaser, upon displaying the sticker on the upper left hand corner of the rear window of the motor vehicle temporary registration permit in the manner prescribed by the department, may operate the vehicle during the period for which the window sticker has been validated stated in the temporary registration permit without displaying the registration certificate or number plates or plate for the current year. The county treasurer may not sell, and no person may not purchase, more than one 60-day temporary window sticker registration permit for any vehicle, the ownership of which has not changed since the issuance of the previous 60-day window sticker temporary registration permit.~~

~~(2) A vehicle for which an application for title cannot be completed may not be registered by the county treasurer nor may license plates for the vehicle be issued by the county treasurer until the completed certificate of ownership or application for title is presented for the purpose of transferring ownership.~~

~~(3)(2) In the event The department may authorize the county treasurer to extend the previously issued temporary registration permit for an additional 60-day period if:~~

~~(a) an unusual circumstance prevents the owner of a vehicle from presenting the certificate of ownership title within the 60-day period permitted under subsection (1);;~~

~~(b) the owner may apply to the motor vehicle division for an extended temporary window sticker on an application form provided by the division. The form must be accompanied by the title application requests, on a form prescribed by the department, an extension of the time for which the temporary registration permit is valid and pays a \$10 fee.~~

~~(4)(3) Upon receipt of an application for an extended temporary window sticker and title as designated in subsection (3), the motor vehicle division or the county treasurer, with the authorization of the motor vehicle division, may issue an extended temporary window sticker, valid for an additional 60 days, upon payment of a fee of \$10 that must be deposited in the general fund. At the end of the extended 60-day period or in the event the request for extension is rejected by the department for cause, the owner may obtain a certificate of ownership by the method provided the expiration of the second 60-day temporary registration permit, if the purchaser still cannot present the previously issued certificate of title, properly assigned to the purchaser by the prior owner, or if a dispute remains as to any preexisting, perfected security interests created by the prior owner or the owner's assignee, the department may authorize the county treasurer to register the vehicle and advise the purchaser that the registration will not be renewed at the end of the registration period, unless:~~

(a) *the previously issued certificate of title has been surrendered to the department, its authorized agent, or the county treasurer and the process for issuing a certificate of title has been completed; or*

(b) *the purchaser complies with the requirements of ~~in~~ 61-3-208.*"

**Section 66.** Section 61-3-411, MCA, is amended to read:

**"61-3-411. Registration of a motor vehicle owned and operated solely as a collector's item.** (1) An owner of a motor vehicle that is more than 30 years old and that is used solely as a collector's item and not for general transportation purposes may file with the department an application for the registration of the motor vehicle. The application must be sworn to before an officer authorized to administer oaths. The application must state:

(a) the name and address of the owner;

(b) the name and address of the person from whom purchased;

(c) the make, the gross weight, the year and number of the model, and the manufacturer's identification number and serial number of the motor vehicle; and

(d) that the vehicle is owned and operated solely as a collector's item and not for general transportation purposes.

(2) Upon receipt of the application for registration and payment of the registration ~~fee fees, including fees in lieu of tax,~~ the department shall file the application and register the motor vehicle in the manner specified in ~~61-3-401-61-3-303~~ and, unless the applicant chooses to exercise the option allowed in 61-3-412, shall deliver to the applicant:

(a) for a motor vehicle manufactured in 1933 or earlier, two license plates bearing the inscription "Pioneer—Montana" and the registration number; or

(b) for a motor vehicle manufactured in 1934 or later and more than 30 years old, two license plates bearing the inscription "Vintage—Montana" and the registration number.

(3) The year of issuance may not be shown on the plates.

(4) Annual renewal of the registration of a motor vehicle registered under this section is not required, and the registration is valid as long as the vehicle is in existence and owned by the initial registrant. Upon sale of the motor vehicle, the purchaser shall renew the registration and pay a license renewal fee of \$10 for a vehicle weighing more than 2,850 pounds and \$5 for a vehicle weighing 2,850 pounds or less."

**Section 67.** Section 61-3-412, MCA, is amended to read:

**"61-3-412. Display of original Montana license plates on collector's item vehicle — definition — validation.** (1) As used in this section, "original Montana license plate" means a license plate issued according to the provisions of 61-3-331; section 53-116, R.C.M. 1947; section 1759.1, R.C.M. 1935; or section 1759, R.C.M. 1921; whichever section was effective during the year of the manufacture of the motor vehicle on which the license plate is authorized to be displayed.

(2) Notwithstanding the provisions of 61-3-332, the department shall authorize the owner of a motor vehicle registered as provided in 61-3-411 to display original Montana license plates, with validation as required in subsection (3), after:

(a) payment of the fee required in subsection (5);

(b) inspection by a highway patrol officer of the original Montana license plate to be displayed on the motor vehicle and, upon payment of a \$5 fee, receipt of the highway patrol officer's certification that the officer has determined that the license plate is legible and meets the requirements of subsection (1); and

(c) receipt of an application by the owner of the motor vehicle as provided for in 61-3-411.

(3) If the owner of a vehicle registered under the provisions of 61-3-314 meets the requirements of subsection (2), the department shall:

(a) file the application and register information on the motor vehicle in the manner prescribed in ~~61-3-101~~ 61-3-303; and

(b) issue a validating decal inscribed with:

(i) a unique number; and

(ii) the letter:

(A) "P" to designate vehicles described in 61-3-411(2)(a); or

(B) "V" to designate vehicles described in 61-3-411(2)(b).

(4) The owner of the motor vehicle shall permanently affix the validating decal to the windshield of the collector's item motor vehicle or, if a windshield does not exist, to another prominent and visible position on the vehicle.

(5) The owner of the motor vehicle shall pay to the department with the application required under this section a one-time special collector's item motor vehicle license fee of \$20."

**Section 68.** Section 61-3-456, MCA, is amended to read:

**"61-3-456. Registration of motor vehicle owned and operated by Montana resident on active military duty stationed outside Montana.**

(1) As an incentive for military service, an owner of a motor vehicle who is a Montana resident who entered active military duty from Montana and who is stationed outside Montana may file with the department an application for the registration of the motor vehicle. The application must be sworn to before an officer authorized to administer oaths. The application must state:

(a) the name and address of the owner;

(b) the make, the gross weight, the year and number of the model, and the manufacturer's identification number and serial number of the motor vehicle; and

(c) that the vehicle is owned and operated by a Montana resident who meets the qualifications of subsection (1) and is on active military duty and stationed outside Montana.

(2) The registration fee for a motor vehicle registered under subsection (1) is as provided in 61-3-311 and 61-3-321.

(3) A vehicle registered under this section is not subject to:

(a) the taxes described in ~~61-3-303(2)(b)~~ 61-3-303(5)(b);

(b) assessment under 15-8-202 or 61-3-503, the fee in lieu of tax under 61-3-529, or the registration fee under 61-3-560 through 61-3-562; or

(c) any of the fees provided in part 5 of this chapter."

**Section 69.** Section 61-3-519, MCA, is amended to read:

**“61-3-519. Grace period for registration and payment of fee — penalty for failure to pay fee.** (1) Unless the fee in lieu of tax provided in 61-3-523 for the year has been paid, the purchaser of a new camper has 20 days from the date of purchase to apply for the camper decal, as provided in 61-3-524, and to pay the fee, as if the fee on the camper were being imposed for the first time in that registration year. The purchaser may operate or transport a camper on the highways of Montana without a decal during the 20-day period if the operator of the camper or of the vehicle upon which the camper is transported has in the operator’s possession a 20-day ~~certificate~~ *temporary registration permit* issued by a dealer, if the camper was purchased from a dealer, or a ~~vehicle purchase certificate~~ *temporary registration permit* issued pursuant to 61-3-317 or other evidence of purchase of the camper.

(2) A purchaser who fails to make application and pay the fee within the time provided in subsection (1) is subject to a penalty of \$10, which must be collected by the county treasurer when the tax is paid and ~~must be~~ *is* in addition to the fees otherwise provided by law.”

**Section 70.** Section 61-3-562, MCA, is amended to read:

**“61-3-562. Permanent registration — transfer of vehicle ownership — rules.** (1) (a) The owner of a light vehicle 11 years old or older subject to the registration fee, as provided in 61-3-561, may permanently register the vehicle upon payment of a \$50 registration fee, the applicable registration and license fees under 61-3-321, and an amount equal to five times the applicable fees imposed for each of the following:

- (i) junk vehicle disposal fees under 15-1-122(3)(a);
- (ii) weed control fees under 15-1-122(3)(b);
- (iii) the former county motor vehicle computer fees under 61-3-511;
- (iv) the local option vehicle tax or flat fee on vehicles under 61-3-537;
- (v) if applicable, license plate fees under 61-3-332 and renewal fees for personalized plates under 61-3-406;
- (vi) if applicable, the amateur radio operator license plate fee under 61-3-422;
- (vii) if applicable, the annual scholarship donation fee under 61-3-465; and
- (viii) senior citizens and persons with disabilities transportation services fees as provided in 61-3-321(6).

(b) A person who permanently registers a vehicle as provided in subsection (1)(a) shall pay an additional \$2 fee at the time of registration for deposit in the state general fund. The department shall pay from the general fund an amount equal to the \$2 fee collected under this subsection (1)(b) from each motor vehicle registration to the pension trust fund for payment of supplemental benefits provided for in 19-6-709.

(2) In addition to the fees described in subsection (1), an owner of a truck with a manufacturer’s rated capacity of 1 ton or less that is permanently registered shall pay five times the applicable fees imposed under 61-10-201.

(3) The owner of a vehicle that is permanently registered under this section is not subject to additional fees under 61-3-561 or to other motor vehicle registration fees described in this section for as long as the owner owns the vehicle.

(4) The county treasurer shall:

(a) distribute the \$50 registration fee collected under this section as provided in 61-3-509;

(b) once each month, remit to the department of revenue the amounts collected under this section, other than the local option vehicle tax or flat fee, for the purposes of 61-3-321(3) and 61-10-201. The county treasurer shall retain the local option vehicle tax or flat fee.

(5) (a) The permanent registration of a vehicle allowed by this section may not be transferred to a new owner. If the vehicle is transferred to a new owner, the department shall cancel the vehicle's permanent registration.

(b) Upon transfer of a vehicle registered under this section to a new owner, the new owner shall apply for a certificate of ownership title under 61-3-201 and file an application for registration under 61-3-303. (Subsection (1)(b) terminates on occurrence of contingency—sec. 24, Ch. 191, L. 2001.)”

**Section 71.** Section 61-3-603, MCA, is amended to read:

**“61-3-603. Penalty for alteration or forgery of certificate of ownership or certificate of title — or assignment thereof.** Any A person who alters or forges or causes to be altered or forged any motor vehicle certificate of ownership or certificate of title or any assignment thereof of a certificate of ownership or certificate of title or who holds or uses any such certificate or assignment knowing it to have that the certificate has been altered or forged is guilty of a felony. and upon Upon a conviction thereof of a violation of this section, the offender is subject to a fine of not more than \$5,000, or to imprisonment in any penal institution within the state for a period of not more than 10 years, or both, in the discretion of the court.”

**Section 72.** Section 61-3-701, MCA, is amended to read:

**“61-3-701. Foreign Out-of-state vehicles used in gainful occupation to be registered — reciprocity.** (1) Before a foreign licensed motor vehicle that is registered in another jurisdiction may be operated on the highways of this state for hire, compensation, or profit or before the owner or user of the vehicle uses the vehicle if the owner or user is engaged in gainful occupation or business enterprise in the state, including highway work, the owner of the vehicle shall register the vehicle at the office of apply to a county treasurer for registration upon an application form furnished by or an authorized agent of the department. Upon satisfactory evidence of ownership submitted to the county treasurer or the department's authorized agent and the payment of fees in lieu of taxes or registration fees, if appropriate, as required by 15-8-201, 15-8-202, 15-24-301, 61-3-529, 61-3-537, or 61-3-560 and 61-3-561, the treasurer or authorized agent shall enter the vehicle for registration purposes only on the electronic registry maintained by the department under 61-3-101 shall accept the application for registration and shall collect the regular license fee required for the vehicle.

(2) Upon payment of the fees or taxes, the treasurer or the department's authorized agent shall issue to the applicant a copy of the certificate entitled “Owner's Certificate of Registration and Payment Receipt” and forward a duplicate copy of the certificate to the department. The treasurer shall at the same time issue to the applicant vehicle owner a registration receipt and the proper license plates or other identification markers, which The license plates or identification markers must at all times be displayed upon the vehicle when operated or driven upon roads and highways of this state during the effective registration period of the license indicated on the receipt.



(3) The registration receipt does not constitute evidence of ownership but must be used only for registration purposes. A Montana certificate of ownership title may not be issued for ~~this type of registration~~ a vehicle registered under this section.

(4) This section is not applicable to a vehicle covered by a valid and existing reciprocal agreement or declaration entered into under ~~the provisions of the laws of Montana law.~~

**Section 73.** Section 61-4-104, MCA, is amended to read:

**“61-4-104. Record of purchase or sale.** A dealer or wholesaler licensed under 61-4-101 shall keep a book or record of the purchases, sales or exchanges, or receipts for the purpose of sale of used vehicles and a description of the vehicles, together with the name and address of the seller, of the purchaser, and of the alleged owner or other person from whom each vehicle was purchased or received or to whom it was sold or delivered, as the case may be. The description in the case of motor vehicles must also include the vehicle identification number and engine number, if any, and must include a statement that a number has been obliterated, defaced, or changed if that has occurred. In the case of a trailer, semitrailer, or special mobile equipment, the record must include the manufacturer’s number and other numbers or identification marks that appear on the trailer, semitrailer, or special mobile equipment. The dealer or wholesaler must also have ~~a duly~~ an assigned certificate of ownership or certificate of title from the owner of the motor vehicle to the dealer or wholesaler from the time the motor vehicle is delivered to the dealer or wholesaler until it has been disposed of by the dealer or wholesaler. It is a violation of this part for a dealer or wholesaler to fail to take assignment of all certificates of ownership, certificates of title, or manufacturer’s certificates of origin for vehicles acquired by the licensee or to fail to assign the certificate of ownership, certificate of title, or manufacturer’s certificate of origin for vehicles sold. All records required to be kept in accordance with this section, in addition to the required retention of odometer disclosure information under 61-3-206(4), must be physically located and maintained within the building referred to in 61-4-101. An authorized representative of the department, upon presentation of the representative’s credentials, may inspect and have access to and copy any records required under this chapter.”

**Section 74.** Section 61-4-111, MCA, is amended to read:

**“61-4-111. Used motor vehicles — transfer to and from dealers.** (1) A licensed dealer, broker, or wholesaler who intends to resell a used motor vehicle and who operates the vehicle only for demonstration purposes:

(a) is exempt from registration under 61-3-201(2) when applying for a certificate of ~~ownership~~ title; and

(b) may transfer or receive ownership of a motor vehicle by use of a dealer reassignment section on a certificate of ~~ownership~~ title; ~~however~~ However, when the allotted number of dealer reassignment sections on a certificate of ~~ownership~~ title has been completed, ownership of the vehicle may not be transferred until an application for a certificate of ~~ownership~~ title has been submitted by the dealer to the department and a new certificate of ~~ownership~~ title has been issued.

(2) Upon the transfer of a used motor vehicle to a person other than a licensed dealer, broker, or wholesaler, the following acts are required of the dealer on or before the times set forth in this subsection:

(a) Prior to delivery of the vehicle to the purchaser, the dealer shall issue a *temporary registration permit for the vehicle* and affix *the temporary registration permit to the rear window of the vehicle* ~~a 20-day permit in a form to be manner prescribed by the department and containing the name and address of the purchaser, date of sale, name and address of the dealer, and a description of the vehicle, including its serial number.~~ *The temporary registration permit issued by the dealer is valid for 20 days from the date of issuance.* There must be imprinted on the *temporary registration permit* in bold letters the following statement: "IT IS UNLAWFUL TO PLACE LICENSE PLATES UPON THIS VEHICLE UNTIL REGISTERED AT THE OFFICE OF THE COUNTY TREASURER". ~~One~~ *Unless a durable license plate style placard is issued, one* copy of the *temporary registration permit* must be delivered by the dealer to the county treasurer in the manner prescribed in subsection (2)(b), and a copy must be retained by the dealer for the dealer's file. *If a durable placard is issued, the dealer shall create and retain the relevant records as prescribed by the department.* It is unlawful for the dealer to issue more than one *20-day temporary registration permit* ~~per~~ *for each vehicle sale.*

(b) Within 4 working days following the date of delivery of the vehicle, the dealer shall forward to the county treasurer of the county where the purchaser resides:

(i) ~~the assigned certificate of ownership and certificate of registration title or, if a certificate of title for the vehicle has not been issued in this state, a copy of the then-current registration receipt or certificate (if the certificates are then in the dealer's possession), with an application for registration;~~

(ii) *an application for a certificate of title* executed by the new owner in accordance with the provisions of *[section 10] and 61-3-322;* and

(iii) *a copy of the temporary registration permit* affixed to the vehicle by the dealer. ~~The department, upon receipt of the documents from the county treasurer, together with the conditional sales contract or other lien, if any, shall issue a new certificate of ownership and certificate of registration, together with a statement of any conditional sales contract, mortgage, or other lien as provided in 61-3-202.~~

(c) Transmission of the documents by the dealer to the county treasurer may be accomplished either by personal delivery or by first-class mail, in which event they are considered to have been delivered at the time of mailing.

~~(e)~~(d) If the dealer is unable to forward the ~~certificate of ownership title or, if applicable, registration receipt certificate of registration~~ *certificate of registration* within the time set forth in subsection (2)(b) because the *certificate of title* is lost, is in the possession of third parties, or is in the process of reissuance in this state or elsewhere, the dealer shall comply in all other respects with the provisions of subsection (2)(b) and shall forward the missing document or documents to the county treasurer, either personally or by first-class mail, within 3 days after receipt.

(3) Upon compliance by the dealer with the requirements in this section, title to the motor vehicle is considered to have passed to the purchaser as of the date of the delivery of the vehicle to the purchaser by the dealer, and the dealer has no further liability or responsibility with respect to the processing of registration.

(4) *Upon receipt from the county treasurer of the documents required under subsection (2), the department shall:*

(a) update the electronic record of the title maintained by the department under 61-3-101; or

(b) issue a certificate of title, if requested under, [section 5(2)(f)]; and

(c) comply with the applicable provisions of Title 61, chapter 3, parts 1 through 3.

(4)(5) For purposes of this section, "motor vehicle" includes a trailer as defined in 61-1-111."

**Section 75.** Section 61-4-112, MCA, is amended to read:

**"61-4-112. New motor vehicles — transfers by dealers.** (1) When a motor vehicle dealer transfers a new motor vehicle to a purchaser or other recipient, the dealer shall:

(a) issue and affix a *temporary registration* permit, as prescribed in 61-4-111(2)(a), for transfers of used motor vehicles and retain a copy of the *temporary registration* permit or, if a durable license-plate style placard is issued, affix the placard and create and retain all other relevant records prescribed by the department;

(b) within 4 working days following the date of delivery of the new motor vehicle, forward to the county treasurer of the county where the purchaser or recipient resides:

(i) one copy of the *temporary registration* permit issued under subsection (1)(a) or a copy of the information described in the records concerning a placard;

(ii) an application for a certificate of title with a notice of security interest, if any, executed by the purchaser or recipient; and

(iii) a ~~statement~~ *manufacturer's certificate* of origin that shows that the vehicle has not previously been registered or owned, except as otherwise provided in this section, by any person, ~~firm, corporation, or association~~ other than a new motor vehicle dealer holding a franchise or distribution agreement from a new car manufacturer, distributor, or importer.

(2) Upon receipt from the county treasurer of the documents required under subsection (1), the department shall issue a certificate of ~~ownership and certificate of registration, together with a statement of lien as provided in 61-3-202~~ title, if requested under [section 5(2)(f)], and otherwise comply with the provisions of Title 61, chapter 3, parts 1 through 3, as applicable."

**Section 76.** Section 61-4-120, MCA, is amended to read:

**"61-4-120. Application for auto auction license — general regulations.** (1) A person, ~~firm, association, or corporation~~ that takes possession of a motor vehicle owned by another person through consignment, bailment, or any other arrangement for the purpose of selling the motor vehicle to the highest bidder when all buyers are licensed motor vehicle dealers, wholesalers, or wrecking facilities shall file by mail or otherwise in the office of the department a verified application for licensure as an auto auction. The application must be made in the following manner:

(a) Each application and all of the information contained in it must be verified by the department or an authorized representative of the department on a form to be furnished by the department for that purpose. The application must provide the following information:

(i) the name in which the business is to be conducted and the location of premises, including street address, city, county, and state, where records are

kept, sales are made, and motor vehicle stock is displayed as an established place of business that displays a sign indicating the firm name and that vehicles are offered for sale. The letters on the sign must be clearly visible and readable to the major avenue of traffic at a minimum distance of 150 feet.

(ii) the name and address of all owners or persons having an interest in the business. In the case of a corporation, the names and addresses of the president and secretary are sufficient.

(iii) a statement that the applicant is authorized to auction used motor vehicles, recreational vehicles, trailers, semitrailers, special mobile equipment, motorcycles, and quadricycles under one license. A licensed auto auction may not auction a new motor vehicle except when authorized by a new motor vehicle manufacturer, importer, distributor, or representative, for the purpose of conducting a closed-factory fleet sale to dispose of new motor vehicles by the franchisor (manufacturer, distributor, or importer) to franchisee purchasers when the purchasers are licensed new motor vehicle dealers purchasing new motor vehicle line-makes authorized by their respective franchise, sales, or distributor agreements. An auto auction licensed under the provisions of this section shall notify and update the department with current fleet sale agreements between the auto auction and franchisor. An auto auction may not conduct a factory fleet sale unless authorized or appointed by a franchisor licensed under part 2 of this chapter.

(b) Each application must be accompanied by a bond of \$35,000 and must be conditioned that the applicant shall conduct business in accordance with the requirements of the law. All bonds must run to the state of Montana, must be approved by the department and filed in its office, and must be renewed annually.

(2) An auto auction's license must be renewed and paid for annually to the department, and an application for relicensure must be filed by January 1 of each year. The fee required for each first-time applicant is \$500 and for subsequent renewal applications is \$100 each year. Upon receipt of a properly completed application, fee, and bond, the department shall issue the auto auction license and assign an auto auction license number for each applicant in a manner determined by the department. Auto auctions dealing in motor vehicles may sell only to licensed dealers and wholesalers.

(3) Auto auctions that are licensed under this section and that hold a current license number may issue temporary *registration* permits, which may be displayed and used by a buyer to operate an unregistered vehicle purchased from the auto auction. The temporary *registration* permit is valid for a period of 72 hours from the time of purchase and may be used only for the purpose of driving or transporting a vehicle from the auction premises to the purchaser's established place of business or point of destination. Temporary *registration* permits must be on a form prescribed by the department and must contain the name, address, and license number of the purchaser, the date of sale, the name, address, license number, and authorized signature of the auto auction, and a description of the vehicle, including its serial number. The department shall collect a fee of \$10 from the auto auction for each temporary *registration* permit, and the auto auction may charge a vehicle purchaser no more than \$10 for the issuance of each temporary *registration* permit to offset the cost of the temporary *registration* permit. It is unlawful for the auto auction to issue more than one temporary *registration* permit ~~per~~ for each vehicle sale.

(4) A licensed auto auction may apply for and may be authorized by the department to purchase and use license plates of a type and amount approved by the department, upon payment of a fee to the department to offset the cost of production. Licensed auto auctions may use the license plates to transport inventory vehicles from a point of storage or a point of delivery in this state to the auto auction's place of business, for road testing authorized vehicles, or for moving vehicles for purposes of repairing, painting, upholstering, polishing, and related activities. One license plate is required to be conspicuously displayed on the rear of the vehicle. Auto auctions may appoint designated persons, ~~partnerships, corporations,~~ service stations, or repair garages to use the license plate only when conducting work for the auto auction involving repairing, painting, upholstering, polishing, or performing similar types of work upon a vehicle. Upon application for an auto auction license, the applicant, if requesting the license plates, shall submit a sworn affidavit on a form prescribed by the department, listing each authorized person designated by the auction to use the license plates. The auto auction is responsible for reporting any changes to the affidavit within 72 hours after the amendment has occurred. An auto auction licensed under the provisions of this section is liable for the proper use of the license plates, which may not be used for private purposes. The department may revoke an auto auction's 72-hour temporary *registration* permit and license plate privileges if an auction issues, authorizes the use of, or uses a temporary *registration* permit or the license plate in violation of the provisions of this section.

(5) (a) Each auto auction shall keep a book or record, in a form and manner subject to approval by the department, of the purchases, sales, or exchanges or the receipts for the purpose of sale of any motor vehicle, a properly completed copy of a temporary *registration* permit issued to a vehicle purchaser, the date of title transfer, and a description of the motor vehicle, together with the name and address of the seller, the purchaser, and the alleged owner or other person from whom the motor vehicle was purchased or received or to whom it was sold or delivered. The description in the case of a motor vehicle must include:

(i) the vehicle identification number and engine number, if any; and

(ii) a statement that a number has been obliterated, defaced, or changed, if it has.

(b) An auto auction licensed under this section shall validate the sale of a motor vehicle through its auction by stamping its name and license number upon the certificate of ~~ownership title~~ at a location on the ~~front or back of the~~ certificate *of title*, at the margin in the assignment section as executed between the transferor and transferee. An auto auction's stamp must be legible and may not interfere with the information recorded on the certificate *of title* between the transferor and transferee. If the certificate of ~~ownership title~~ lacks adequate space for the auto auction to place its stamp, the auction may provide the transferee a copy of the auction invoice bearing the:

(i) name and license number of the auction, along with an indication of the vehicle year, make, model, and identification number;

(ii) name, address, and signature of the transferor;

(iii) name, license number, and signature of the transferee; and

(iv) date the vehicle was sold through the auction.

(c) The invoice must be attached to the certificate of ~~ownership title~~ and must be presented to the department with any application for title.

(d) An auto auction shall retain, for 5 years, odometer disclosure information, including the name of the owner on the date the auto auction took possession of the motor vehicle, the name of the buyer, the vehicle identification number, and the odometer reading on the date the auto auction took possession of the motor vehicle. The odometer information may be retained in any way that is systematically retrievable and is not required to be maintained on any special disclosure form. The information may be part of the auction receipt or invoice or be maintained as a portion of a computer database or manual file. An auto auction that executes a transfer of ownership as an agent on behalf of a seller or buyer is liable for providing an odometer disclosure statement for the seller or an odometer disclosure acknowledgment for the buyer under the provisions of 61-3-206.”

**Section 77.** Section 61-4-121, MCA, is amended to read:

**“61-4-121. Twenty-day permit — limitation on issuance and transfer — violation — penalty.** (1) (a) A dealer may not issue more than one 20-day *temporary registration* permit under 61-4-111 or 61-4-112 ~~per~~ *for each vehicle sale.*

(b) A dealer may not transfer 20-day *temporary registration* permits to another dealer unless the dealer:

- (i) notifies the department within 3 days of the transfer;
- (ii) identifies to the department the dealer to whom any *temporary registration* permits have been transferred;
- (iii) informs the department of the date of the transfer and the quantity and serial numbers of the transferred *temporary registration* permits.

(2) A dealer who violates the provisions of subsection (1) is subject to revocation of the privilege to issue 20-day *temporary registration* permits for a period of time determined by the department.”

**Section 78.** Section 61-12-406, MCA, is amended to read:

**“61-12-406. Issuing certificate of ownership title.** The department shall issue a certificate of ~~ownership~~ *title* upon presentation by the purchaser of the certificate of sale and payment of the fees required by law.”

**Section 79.** Section 75-10-512, MCA, is amended to read:

**“75-10-512. Records required of facilities.** (1) Each motor vehicle wrecking facility shall maintain books or files in which are kept a record and description of every junk vehicle obtained by it, together with the name and address of the person from whom the vehicle was purchased.

- (2) This record must also contain:
- (a) the certificate of ~~ownership~~ *title*, sheriff's certificate of sale, notarized bill of sale from the former owner or person selling the vehicle, release of ownership or interest in the motor vehicle, or sheriff's release;
  - (b) the name of the state where the vehicle was last registered;
  - (c) the make of the vehicle;
  - (d) the vehicle identification number, as defined in 61-3-210, or the motor number, identification number, or serial number;
  - (e) the date purchased;
  - (f) the disposition of the vehicle.

(3) An authorized representative of the department of justice who presents credentials may also inspect, have access to, and copy records required under this section.”

**Section 80.** Section 75-10-513, MCA, is amended to read:

**“75-10-513. Disposal of junk vehicles — fees and records.** (1) When a motor vehicle wrecking facility submits a junk vehicle to the disposal program, it shall pay a disposal fee of \$2 for each vehicle submitted, and the vehicle is then the property of the state.

(2) Quarterly, each motor vehicle wrecking facility shall mail to the department of justice, on a form approved by the department of justice, a list of all junk vehicles received by the motor vehicle wrecking facility during the quarter, stating the year, make, and complete identification number of each vehicle. If a certificate of ownership title is received for a junk vehicle on the list, that certificate of ownership title must accompany the list. The department of justice shall issue a receipt for the certificate of ownership title if requested by the licensed facility, and the receipt may serve as an instrument for reclaiming the certificate of ownership title if the vehicle is rebuilt.

(3) A motor vehicle graveyard shall submit to the department the records, documents, and other information concerning junk vehicles received by it that are required by rules of the department.”

**Section 81. Repealer.** Sections 23-2-509, 23-2-510, 23-2-520, 23-2-612, 23-2-613, 23-2-620, 23-2-810, 23-2-811, 23-2-812, 23-2-813, 61-3-105, 61-3-305, and 61-3-518, MCA, and section 4, Chapter 90, Laws of 1997, section 2, Chapter 260, Laws of 1999, and section 9, Chapter 394, Laws of 2001, are repealed.

**Section 82. Codification instruction.** (1) [Sections 1 through 4] are intended to be codified as an integral part of Title 61, chapter 1, and the provisions of Title 61, chapter 1, apply to [sections 1 through 4].

(2) [Sections 5 through 13] are intended to be codified as an integral part of Title 61, chapter 3, part 2, and the provisions of Title 61, chapter 3, part 2, apply to [sections 5 through 13].

(3) [Section 45] is intended to be codified as an integral part of Title 61, chapter 3, part 4, and the provisions of Title 61, chapter 3, part 4, apply to [section 45].

**Section 83. Coordination instruction.** (1) If House Bill No. 261 and [this act] are both passed and approved, then:

(a) [Sections 4 through 7] of House Bill No. 261, amending 23-2-508, 23-2-611, 23-2-811, and 61-3-203, are void.

(b) Section 44 of [this act], amending 61-3-103, must include as a new subsection (9):

*(9) A fee of \$10 must be paid to the department by a vehicle owner if, following satisfaction or release of a security interest and its removal from the department's records, the vehicle owner requests issuance of a new certificate of title without the security interest or lien shown on the face of the title. The \$10 fee must be deposited in the motor vehicle information technology system account provided for in 61-3-550.*

(c) [Section 51] of [this act], amending 61-3-203, must read:

**“61-3-203. Fee for original certificate of ownership and transfer of registration title — disposition.** A charge person applying for a certificate of

title shall pay a fee of \$5 \$10 must be made for issuance of an original certificate of ownership of title. and for a transfer of registration, which The fee must be collected by the county treasurer or by an authorized agent of the department at the time of application. An additional fee of \$2 must be paid for light vehicles, trucks and buses weighing less than 1 ton, and logging trucks. The fees must be paid to the county treasurer or agent of the department and, of the \$10 fee, \$5 must be forwarded to the department of revenue and deposited in the state general fund. The remaining \$5 must be forwarded to the department for deposit in the motor vehicle information technology system account provided for in 61-3-550."

(d) Section 52 of [this act], amending 61-3-204, must read:

**"61-3-204. Lost certificates Replacement certificate of title — application.** (1) ~~In the event any~~ If a certificate of ownership title is lost, stolen, destroyed, mutilated, or becomes illegible, or if the owner wants to update personal information on the electronic record of title or have a replacement certificate of title issued with updated information, the owner shall immediately make application for and obtain, as shown on the electronic record of title, may apply for and request the department to issue a duplicate thereof, upon furnishing replacement certificate of title. The application must include satisfactory evidence of such the facts requiring the replacement certificate of title and upon payment of be accompanied by a fee of \$3 \$10. Revenue from this Of the \$10 fee, \$5 must be deposited in the state general fund in accordance with 15-1-504, and the remaining \$5 must be forwarded to the department for deposit in the motor vehicle information technology system account provided for in 61-3-550.

(2) Each replacement certificate of title issued by the department must contain the following statement:

*"This replacement voids any previously issued title."*

(2) If House Bill No. 698 and [this act] are both passed and approved, then [section 3] of House Bill No. 698 is void and [section 60] of [this act], amending 61-3-303, must read:

**"61-3-303. Application for registration Registration — process — fees.** (1) ~~Each owner of A Montana resident who owns~~ a motor vehicle operated or driven upon the public highways of this state shall for each register the motor vehicle owned, except as otherwise provided in this section, file in the office of the county treasurer in the county where the owner permanently resides at the time of making the application or, if the vehicle is owned by a corporation or used primarily for commercial purposes, in the taxing jurisdiction of the county where the vehicle is permanently assigned an application for registration or reregistration on a form prescribed by the department. The application must contain:

(a) the name and address of the owner, giving the county, school district, and town or city within whose corporate limits the motor vehicle is taxable, if taxable, or within whose corporate limits the owner's residence is located if the motor vehicle is not taxable;

(b) the name and address of the holder of any security interest in the motor vehicle;

(c) a description of the motor vehicle, including make, year model, engine or serial number, manufacturer's model or letter, gross weight, declared weight on



~~all trucks for which the manufacturer's rated capacity is 1 ton or less, and type of body and, if a truck, the manufacturer's rated capacity;~~

~~(d) the declared weight on all trailers operating intrastate, except travel trailers or trailers and semitrailers registered as provided in 61-3-711 through 61-3-733;~~

~~(e) a space in which the person registering the vehicle may indicate the person's desire to donate \$1 or more to promote awareness and education efforts for procurement of organ and tissue donations for anatomical gifts; and~~

~~(f) other information that the department may require.~~

*(2) (a) Except as provided in subsection (3), the county treasurer shall register any vehicle for which:*

*(i) as of the date that the vehicle is to be registered, the owner delivers an application for a certificate of title to the department, its authorized agent, or a county treasurer; or*

*(ii) the county treasurer confirms that the department has an electronic record of title for the vehicle as provided under 61-3-101.*

*(b) To register a vehicle, the county treasurer shall update the electronic record of title maintained by the department under 61-3-101 by entering the fees paid and recording any changes to the recorded data.*

*(3) (a) A county treasurer shall register a motor vehicle for which a certificate of title and registration were issued in another jurisdiction and for which registration is required under 61-3-701 after the county treasurer examines the current out-of-jurisdiction registration certificate or receipt and receives payment of the fees required in 61-3-701. The county treasurer may ask the vehicle owner to provide additional information, prescribed by the department, to ensure that the electronic record of registration maintained by the department is complete.*

*(b) A county treasurer may register a motor vehicle for which the new owner cannot present the previously issued certificate of title only as authorized by the department under 61-3-342.*

*(4) The department or the county treasurer shall determine the amount of fees, including local option taxes or fees, to be collected at the time of registration for each light vehicle subject to a registration fee under 61-3-560 through 61-3-562 and for each bus, truck having a manufacturer's rated capacity of more than 1 ton, and truck tractor subject to a fee in lieu of tax under 61-3-529. The county treasurer shall collect the registration fee, other appropriate fees, and local option taxes or fees, if applicable, on each motor vehicle at the time of its registration.*

~~(2)(5) A person who files an application for registration or reregistration of seeks to register a motor vehicle, except of a mobile home or a manufactured home as those terms are defined in 15-1-101(1), shall upon the filing of the application pay to the county treasurer:~~

~~(a) the registration fee, as provided in 61-3-311 and 61-3-321 or 61-3-456;~~

~~(b) except as provided in 61-3-456 or unless it has been previously paid, the motor vehicle fees in lieu of tax or registration fees under 61-3-560 through 61-3-562 imposed against the vehicle for the current year of registration and the immediately previous year; and~~

(c) a donation of \$1 or more if the person has indicated on the application that the person wishes to donate to promote awareness and education efforts for procurement of organ and tissue donations in Montana to favorably impact anatomical gifts; and

(d) a donation of \$1 or more if the person has indicated on the application that the person wishes to donate to promote education on, support for, and awareness of traumatic brain injury.

~~(3)(6)~~ The application may not be accepted by the county treasurer may not issue a registration receipt or license plates for the vehicle to the owner unless the owner makes the payments required by subsection ~~(2)~~ (5) accompany the application. Except as provided in 61-3-560 through 61-3-562, the department may not assess or impose and the county treasurer may not collect taxes or fees for a period other than:

(a) the current year; and

(b) the immediately previous year if the vehicle was not registered or operated on the highways of the state, regardless of the period of time since the vehicle was previously registered or operated.

~~(4)(7)~~ The department may make full and complete investigation of the registration status of the vehicle. ~~An applicant for registration or reregistration shall submit proof from appropriate records of the proper county at the request of the department. A person seeking to register a motor vehicle under this section shall provide additional information to support the registration to the department, if requested.~~

~~(5)(8)~~ Revenue that accrues from the voluntary donation provided in subsection ~~(2)(e)~~ (5)(c) must be forwarded by the respective county treasurer to the department of revenue for deposit in the state special revenue fund to the credit of an account established by the department of public health and human services to support activities related to awareness and education efforts for procurement of organ and tissue donations for anatomical gifts.

(9) Revenue that accrues from the voluntary donation provided in subsection (5)(d) must be forwarded by the respective county treasurer to the department of revenue for deposit in the state special revenue fund to the credit of the account established in [section 2 of House Bill No. 698] to support activities related to education regarding prevention of traumatic brain injury.”

**Section 84. Effective date.** [This act] is effective January 1, 2004.

**Section 85. Applicability — retroactive applicability.** (1) Except as provided in subsection (2), [this act] applies to motor vehicle certificates of title and registrations on or after January 1, 2004.

(2) [Section 42] applies retroactively, within the meaning of 1-2-109, to security interests filed before [the effective date of this act].

Approved April 24, 2003

## CHAPTER NO. 478

[HB 734]

AN ACT CHANGING THE DESIGNATED STATE AGENCY FOR THE DEVELOPMENTAL DISABILITIES PLANNING AND ADVISORY COUNCIL

TO THE DEPARTMENT OF COMMERCE; AMENDING SECTIONS 2-15-2204 AND 53-20-206, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Developmental Disabilities Assistance and Bill of Rights Act of 2000, Public Law 106-402, requires each state to have a state council on developmental disabilities and to designate a state agency to provide support and administrative services to the council without interference or placement of conditions upon the operations of the council; and

WHEREAS, the Developmental Disabilities Assistance and Bill of Rights Act of 2000 recognizes only one council in each state, which may take the form of a nonprofit corporation, and the state Developmental Disabilities Planning and Advisory Council is Montana's council; and

WHEREAS, the Developmental Disabilities Assistance and Bill of Rights Act of 2000 further states that each state is required to designate a state agency to administer the federal funds, but that the designated state agency may not provide or pay for services for individuals with developmental disabilities.

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

**Section 1. State developmental disabilities planning and advisory council.** The state may contract with a nonprofit corporation for the purposes of carrying out the responsibilities delegated to the statewide developmental disabilities planning and advisory council appointed pursuant to 2-15-2204 in accordance with the Developmental Disabilities Assistance and Bill of Rights Act of 2000, Public Law 106-402, and this section. Approval of the contract delegating the responsibilities of the council to a nonprofit corporation must be in the form of a letter signed by the secretary of the federal department of health and human services or the secretary's designee.

**Section 2.** Section 2-15-2204, MCA, is amended to read:

**"2-15-2204. Developmental disabilities planning and advisory council.** (1) The governor shall appoint a developmental disabilities planning and advisory council in accordance with the Developmental Disabilities Assistance and Bill of Rights Act of 2000, Public Law 106-402, *codified at 42 U.S.C. 15001, et seq.*

- ~~(2) The council is composed of 29 members and includes the following:~~
- ~~(a) six persons with developmental disabilities;~~
  - ~~(b) six persons who are:~~
    - ~~(i) parents or guardians of a child with developmental disabilities; or~~
    - ~~(ii) immediate relatives or guardians of adults with mentally impairing developmental disabilities who cannot advocate for themselves;~~
  - ~~(c) six persons who may be:~~
    - ~~(i) a person with a developmental disability;~~
    - ~~(ii) a person who is the parent or guardian of a child with a developmental disability; or~~
    - ~~(iii) a person who is an immediate relative or guardian of an adult with mentally impairing developmental disabilities who cannot self-advocate;~~
    - ~~(d) a representative of the program of services provided under the authority of the Rehabilitation Act of 1973, 29 U.S.C. 701, et seq.;~~

~~(e) a representative of the program of services provided under the authority of the Older Americans Act of 1965, 42 U.S.C. 3001, et seq.;~~

~~(f) a representative of the program of services provided under the authority of Title V of the Social Security Act, 42 U.S.C. 701, et seq.;~~

~~(g) a representative of the programs of services provided under the authority of Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq.;~~

~~(h) a representative of the program of services provided under the authority of the Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.;~~

~~(i) one member of the state senate;~~

~~(j) one member of the state house of representatives;~~

~~(k) a representative of the university affiliated or satellite program on developmental disabilities created pursuant to 42 U.S.C. 6061;~~

~~(l) a representative of the state protection and advocacy system created pursuant to 42 U.S.C. 6041; and~~

~~(m) two representatives of nongovernmental in-state entities that are concerned with the provision of services to persons with developmental disabilities.~~

*(2) In addition to the members appointed under subsection (1), the council must include one member of the senate and one member of the house of representatives.*

~~(3)(3) (a) Except as provided in subsection (3)(b), members of the council serve 1-year terms. Nine of the members appointed to the council pursuant to subsections (2)(a) through (2)(c) must be appointed by the governor~~

*(b) Of the members described in 42 U.S.C. 15025(b)(3) who represent persons with developmental disabilities and parents or relatives of persons with developmental disabilities, the governor shall appoint:*

*(i) not less than one-half of the members to serve for terms concurrent with the gubernatorial term and until their successors are appointed. The remaining members serving on the council pursuant to subsections (2)(a) through (2)(c) must be appointed by the governor; and*

*(ii) the remaining members to serve for terms ending on January 1 of the third year of the succeeding gubernatorial term and until their successors are appointed.*

~~(4) Members appointed to the council to fulfill representation requirements of subsections (2)(d) through (2)(m) serve 1 year terms.~~

~~(5) At least one member appointed to the council pursuant to subsections (2)(a) through (2)(c) must be either:~~

~~(a) a person with a developmental disability who resides or previously resided in an institution; or~~

~~(b) an immediate relative or guardian of a person with a developmental disability who resides or previously resided in an institution.~~

~~(6)(4) Members appointed to the council pursuant to subsections (2)(a) through (2)(c) may also be selected to represent the geographical regions and the racial and ethnic composition of the state, including American Indians.~~

~~(7)(5) The Except as provided in [section 1], the council is allocated to the department of commerce for administrative purposes only and, unless~~

inconsistent with the provisions of 53-20-206 and this section, the provisions of 2-15-121 apply. *The department of commerce shall remain the designated state agency for funding purposes if the responsibilities of the council are delegated by contract to a nonprofit corporation.*"

**Section 3.** Section 53-20-206, MCA, is amended to read:

**"53-20-206. Planning and advisory council.** (1) ~~The~~ *If the duties of the planning and advisory council are delegated to an administratively attached state agency, the provisions of this section apply.*

(2) *The planning and advisory council may elect from among its members the officers necessary for the proper management of the council.*

~~(2)~~(3) *The council may adopt rules governing its own organization and procedures.*

~~(3)~~(4) *A majority of the members of the council constitutes a quorum for the transaction of business.*

~~(4)~~(5) *The council may shall employ and fix the compensation and duties of necessary staff and control the location of its office.*

~~(5)~~(6) *A council member, unless he is the member is a full-time salaried officer or employee of this state or any of the political subdivisions of this state, is entitled to be paid in an amount to be determined by the council, not to exceed \$25, for each day in which he the member is actually and necessarily engaged in the performance of council duties. A council member is also entitled to be reimbursed for travel expenses incurred while in the performance of council duties as provided for in 2-18-501 through 2-18-503. Members who are full-time salaried officers or employees of this state or any political subdivisions of this state are not entitled to be compensated for their service as members but are entitled to be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503.*

~~(6)~~(7) *The council shall:*

(a) *advise the department, other state agencies, councils, local governments, and private organizations on programs for services to persons with developmental disabilities; and*

~~(b) develop a plan for a statewide system of community-based services for persons with developmental disabilities; and~~

~~(c)~~(b) *serve in any capacity required by federal law for the administration of federal programs for services to persons with developmental disabilities."*

**Section 4. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 2, chapter 15, part 18, and the provisions of Title 2, chapter 15, part 18, apply to [section 1].

**Section 5. Instructions to code commissioner.** The code commissioner shall renumber 2-15-2204 as an integral part of Title 2, chapter 15, part 18, and make any necessary corresponding changes to reflect the numbering.

**Section 6. Effective date.** [This act] is effective July 1, 2003.

Approved April 24, 2003

**CHAPTER NO. 479**

[SB 76]

AN ACT ELIMINATING CERTAIN SPECIAL EDUCATION DEFINITIONS TO COMPLY WITH FEDERAL CHANGES MADE BY CONGRESS IN THE REAUTHORIZATION OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT; AMENDING SECTIONS 20-7-401 AND 20-7-436, MCA; AND PROVIDING A CONTINGENT EFFECTIVE DATE.

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

**Section 1.** Section 20-7-401, MCA, is amended to read:

**"20-7-401. Definitions.** In this title, unless the context clearly indicates otherwise, the following definitions apply:

~~(1) "Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability.~~

~~(2) "Assistive technology service" means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes:~~

~~(a) the evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;~~

~~(b) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by a child with a disability;~~

~~(c) selecting, designing, fitting, customizing, adapting, applying, retaining, repairing, or replacing an assistive technology device;~~

~~(d) coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;~~

~~(e) training or technical assistance for a child with a disability or, if appropriate, training or technical assistance for that child's family; and~~

~~(f) training or technical assistance for professionals, including individuals providing education or rehabilitation services, for employers, or for other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of a child with a disability.~~

~~(3) "Autism" means a developmental disability that significantly affects verbal and nonverbal communication and social interaction, that is generally evident before 3 years of age, and that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environment change or to change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child's educational performance is adversely affected primarily because the child has a serious emotional disturbance.~~

~~(4)(1) "Child with a disability" means a child evaluated in accordance with the regulations of the Individuals With Disabilities Education Act as having cognitive delay; hearing impairment, including deafness; speech or language impairment; visual impairment, including blindness; emotional disturbance; orthopedic impairment; autism; traumatic brain injury; other health~~

~~impairments; deaf blindness; multiple disabilities; or specific learning disabilities a disability and who because of those impairments the disability needs special education and related services. A child who is 5 years of age or younger may be identified as a child with a disability without the specific disability being specified.~~

~~(5) "Cognitive delay" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance.~~

~~(6) "Deaf blindness" means concomitant hearing and visual impairments, the combination of which causes such severe communication problems and other developmental and educational problems that the problems cannot be accommodated in special education programs solely for children with deafness or for children with blindness.~~

~~(7) "Deafness" means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, in a manner that adversely affects the child's educational performance.~~

~~(8) "Emotional disturbance" means a condition exhibiting one or more of the following characteristics to a marked degree and over a long period of time that adversely affects educational performance: an inability to learn that cannot be explained by intellectual, sensory, or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms or fears associated with personal or school problems. The term includes schizophrenia. The term does not include social maladjustment, unless it is determined that the child is emotionally disturbed.~~

~~(9)(2) "Free appropriate public education" means special education and related services that:~~

~~(a) are provided at public expense under public supervision and direction and without charge;~~

~~(b) meet the accreditation standards of the board of public education, the special education requirements of the superintendent of public instruction, and the requirements of the Individuals With Disabilities Education Act;~~

~~(c) include preschool, elementary school, and high school education in Montana; and~~

~~(d) are provided in conformity with an individualized education program that meets the requirements of the Individuals With Disabilities Education Act.~~

~~(10) "Hearing impairment" means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included within the definition of deafness.~~

~~(11) "Orthopedic impairment" means a severe orthopedic disability that adversely affects a child's educational performance. The term includes but is not limited to impairment caused by congenital anomaly (e.g., clubfoot or absence of some member), impairments caused by disease (e.g., poliomyelitis or bone tuberculosis), and impairments from other causes (e.g., fractures or burns that cause contractures, amputation, or cerebral palsy).~~

~~(12) "Other health impairment" means limited strength, vitality, or alertness because of chronic or acute health problems, such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes, that adversely affects a child's educational performance.~~

~~(13) (3) "Related services" means transportation and any developmental, corrective, and other supportive services in accordance with regulations of the Individuals With Disabilities Education Act that are required to assist a child with a disability to benefit from special education and includes speech language pathology, audiology, occupational therapy, physical therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parental counseling and training.~~

~~(14) (4) "Special education" means specially designed instruction, given at no cost to the parents or guardians, to meet the unique needs of a child with a disability, including but not limited to instruction conducted in a classroom, home, hospital, institution, or other setting and instruction in physical education.~~

~~(15) "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. The term includes but is not limited to such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems that are primarily the result of visual, hearing, or motor disabilities; cognitive delay; or environmental, cultural, or economic disadvantages.~~

~~(16) "Speech language impairment" means a communication disorder, such as stuttering, impaired articulation, or a language or voice impairment, that adversely affects a child's interpersonal relationships or educational performance.~~

~~(17) (5) "Surrogate parent" means an individual appointed to safeguard a child's rights and protect the child's interests in educational evaluation, placement, and hearing or appeal procedures concerning the child.~~

~~(18) "Traumatic brain injury" means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term does not apply to brain injuries that are congenital or degenerative or to brain injuries that are induced by birth trauma.~~

~~(19) "Visual impairment" means an impairment that, after correction, adversely affects a child's educational performance. The term includes both partial blindness and blindness."~~

**Section 2.** Section 20-7-436, MCA, is amended to read:

**"20-7-436. Definitions.** For the purposes of 20-7-435 and this section, the following definitions apply:

(1) (a) "Children's psychiatric hospital" means a freestanding hospital in Montana that:



(i) has the primary purpose of providing clinical care for children and youth whose clinical diagnosis and resulting treatment plan require in-house residential psychiatric care; and

(ii) is accredited by the joint commission on accreditation of healthcare organizations, the standards of the ~~health care financing administration~~ *centers for medicare and medicaid services*, or other comparable accreditation.

(b) The term does not include programs for children and youth for whom the treatment of chemical dependency is the primary reason for treatment.

(2) "Eligible child" means a *Montana resident* child or youth who is less than 19 years of age, ~~who is emotionally disturbed as defined in 20-7-401, and whose~~ *and who has an emotional problem that* is so severe that the child or youth has been placed in a children's psychiatric hospital or residential treatment facility for inpatient treatment of emotional problems.

(3) (a) "Residential treatment facility" means a facility in the state that:

(i) provides services for children or youth with emotional disturbances;

(ii) operates for the primary purpose of providing residential psychiatric care to individuals under 21 years of age;

(iii) is licensed by the department of public health and human services; and

(iv) participates in the Montana medicaid program for psychiatric facilities or programs providing psychiatric services to individuals under 21 years of age; or

(v) notwithstanding the provisions of subsections (3)(a)(iii) and (3)(a)(iv), has received a certificate of need from the department of public health and human services pursuant to Title 50, chapter 5, part 3, prior to January 1, 1993.

(b) The term does not include programs for children and youth for whom the treatment of chemical dependency is the primary reason for treatment."

**Section 3. Notification of code commissioner required.** The office of public instruction shall provide the code commissioner with written verification of the date by which congress, in the reauthorization of the Individuals With Disabilities Education Act, requires states to implement the changes required by reauthorization.

**Section 4. Contingent effective date.** [This act] is effective on the date by which congress, in the reauthorization of the Individuals With Disabilities Education Act, requires all states to implement the changes required by reauthorization.

Approved April 24, 2003

## CHAPTER NO. 480

[SB 89]

AN ACT EXEMPTING PROPERTY HELD BY A LOCAL GOVERNMENT ENTITY FROM THE UNIFORM UNCLAIMED PROPERTY ACT; AMENDING SECTION 70-9-802, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 70-9-802, MCA, is amended to read:

**“70-9-802. Definitions.** In this part, unless the context requires otherwise, the following definitions apply:

(1) “Administrator” means the department of revenue provided for in 2-15-1301.

(2) “Apparent owner” means a person whose name appears on the records of a holder as the person entitled to property held, issued, or owing by the holder.

(3) “Business association” means a corporation, joint-stock company, investment company, partnership, unincorporated association, joint venture, limited liability company, business trust, trust company, land bank, safe deposit company, financial organization, insurance company, mutual fund, utility, or other business entity consisting of one or more persons, whether or not for profit.

(4) “Domicile” means the state of incorporation of a corporation and the state of the principal place of business of a holder other than a corporation.

(5) “Financial organization” means a savings and loan association, bank, banking organization, or credit union.

(6) “Holder” means a person obligated to hold for the account of, or deliver or pay to, the owner property that is subject to this part.

(7) “Insurance company” means an association, corporation, or fraternal or mutual benefit organization, whether or not for profit, engaged in the business of providing life endowments, annuities, or insurance, including accident, burial, casualty, credit life, contract performance, dental, disability, fidelity, fire, health, hospitalization, illness, life, malpractice, marine, mortgage, surety, wage protection, and workers’ compensation insurance.

(8) “Mineral” means gas; oil; coal; other gaseous, liquid, and solid hydrocarbons; oil shale; cement material; sand and gravel; road material; building stone; chemical raw material; gemstone; fissionable and nonfissionable ores; colloidal and other clay; steam and other geothermal resource; or any other substance defined as a mineral by the law of this state.

(9) “Mineral proceeds” means amounts payable for the extraction, production, or sale of minerals or, upon the abandonment of those payments, all payments that become payable after abandonment. The term includes amounts payable:

(a) for the acquisition and retention of a mineral lease, including bonuses, royalties, compensatory royalties, shut-in royalties, minimum royalties, and delay rentals;

(b) for the extraction, production, or sale of minerals, including net revenue interests, royalties, overriding royalties, extraction payments, and production payments; and

(c) under an agreement or option, including a joint operating agreement, unit agreement, pooling agreement, and farmout agreement.

(10) (a) “Money order” includes an express money order and a personal money order, on which the remitter is the purchaser.

(b) The term does not include a bank money order or any other instrument sold by a financial organization if the seller has obtained the name and address of the payee.

(11) “Owner” means a person who has a legal or equitable interest in property subject to this part or the person’s legal representative. The term includes a depositor in the case of a deposit, a beneficiary in the case of a trust

other than a deposit in trust, and a creditor, claimant, or payee in the case of other property.

(12) "Person" means an individual, business association, financial organization, estate, trust, government, governmental subdivision, agency, or instrumentality or any other legal or commercial entity.

(13) (a) "Property" means tangible property described in 70-9-804 or a fixed and certain interest in intangible property that is held, issued, or owed in the course of a holder's business; or, *except as provided in subsection (13)(b)*, by a government, governmental subdivision, agency, or instrumentality; and all income or increments from the property. The term includes property that is referred to as or evidenced by:

~~(a)~~(i) money, check, draft, deposit, interest, or dividend;

~~(b)~~(ii) credit balance, customer's overpayment, gift certificate, security deposit, refund, credit memorandum, unpaid wage, unused ticket, mineral proceeds, or unidentified remittance;

~~(c)~~(iii) stock or other evidence of ownership of an interest in a business association or financial organization;

~~(d)~~(iv) bond, debenture, note, or other evidence of indebtedness;

~~(e)~~(v) money deposited to redeem stocks, bonds, coupons, or other securities or to make distributions;

~~(f)~~(vi) an amount due and payable under the terms of an annuity or insurance policy, including policies providing life insurance, property and casualty insurance, workers' compensation insurance, or health and disability insurance; and

~~(g)~~(vii) an amount distributable from a trust or custodial fund that is established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefits.

(b) *The term does not include property that is held, issued, or owed by a local government entity, as defined in 2-7-501.*

(14) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and that is retrievable in perceivable form.

(15) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession that is subject to the jurisdiction of the United States.

(16) "Utility" means a person who owns or operates for public use any plant, equipment, real property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas."

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

Approved April 24, 2003

**CHAPTER NO. 481**

[SB 115]

AN ACT EXTENDING AND REVISING THE STATUTORY APPROPRIATION, FOR THE FISCAL YEARS BEGINNING JULY 1, 2005, AND ENDING JUNE 30, 2010, OF THE INTEREST FROM \$140 MILLION OF THE COAL SEVERANCE TAX PERMANENT FUND THAT IS DEPOSITED IN THE GENERAL FUND FOR THE COOPERATIVE DEVELOPMENT CENTER, FOR THE GROWTH THROUGH AGRICULTURE PROGRAM, FOR A SMALL BUSINESS DEVELOPMENT CENTER, FOR A SMALL BUSINESS INNOVATIVE RESEARCH PROGRAM, FOR CERTIFIED COMMUNITIES, FOR A MANUFACTURING EXTENSION CENTER, FOR EXPORT TRADE ENHANCEMENT, AND FOR RESEARCH AND COMMERCIALIZATION PROJECTS; AMENDING SECTIONS 15-35-108 AND 17-7-502, MCA, AND SECTION 10, CHAPTER 10, SPECIAL LAWS OF MAY 2000; AND PROVIDING A DELAYED EFFECTIVE DATE AND A TERMINATION DATE.

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

**Section 1.** Section 15-35-108, MCA, is amended to read:

**“15-35-108. (Temporary) Disposal of severance taxes.** Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) For the fiscal year ending June 30, 2003, the amount of 10% and for fiscal years beginning on or after July 1, 2003, the amount of 12% of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) For the fiscal year ending June 30, 2003, the amount of 6.01% and for fiscal years beginning on or after July 1, 2003, the amount of 7.75% must be credited to an account in the state special revenue fund to be allocated by the legislature for local impacts, provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) For fiscal years beginning on or after July 1, 2003, the amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) For fiscal years beginning on or after July 1, 2003, the amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in

the capitol and for other cultural and aesthetic projects. Income from this trust fund, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) (a) Subject to subsections (7)(b) and (7)(c), all other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state.

(b) The interest income from \$140 million of the coal severance tax permanent fund that is deposited in the general fund is statutorily appropriated, as provided in 17-7-502, on an annual basis as follows:

(i) \$65,000 to the cooperative development center;

(ii) for the fiscal year beginning July 1, 2001, \$1.25 million, for the fiscal year beginning July 1, 2002, \$925,000, and for fiscal years beginning on or after July 1, 2003, \$1.25 million for the growth through agriculture program provided for in Title 90, chapter 9;

(iii) to the department of commerce:

(A) \$125,000 for a small business development center;

(B) \$50,000 for a small business innovative research program;

(C) except for the fiscal year beginning July 1, 2002, \$425,000 for certified communities;

(D) \$200,000 for the Montana manufacturing extension center at Montana state university-Bozeman; and

(E) \$300,000 for export trade enhancement;

(iv) \$175,000 to the office of economic development for business recruitment and retention; and

(v) \$600,000 to the department of administration for the purpose of reimbursing tax increment financing industrial districts as provided in 7-15-4299. Reimbursement must be made to qualified districts on a proportional basis to the loss of taxable value as a result of Chapter 285, Laws of 1999, and as documented by the department of revenue. This documentation must be provided to the budget director and to the legislative fiscal analyst. The reimbursement may not be used to pay debt service on tax increment bonds to the extent that the bonds are secured by a guaranty, a letter of credit, or a similar arrangement provided by or on behalf of an owner of property within the district.

(c) For the fiscal year beginning July 1, 2001, there is transferred from the interest income referred to in subsection (7)(b) \$4.85 million to the research and commercialization state special revenue account created in 90-3-1002. For the fiscal year beginning July 1, 2002, there is transferred from the interest income referred to in subsection (7)(b) \$3.165 million to the research and commercialization state special revenue account created in 90-3-1002. Beginning July 1, 2003, there is transferred annually from the interest income referred to in subsection (7)(b) \$3.65 million to the research and commercialization state special revenue account created in 90-3-1002. (Terminates June 30, 2005—sec. 10(2), Ch. 10, Sp. L. May 2000; sec. 8(1), Ch. 12, Sp. L. August 2002.)

**15-35-108. (Effective July 1, 2005) Disposal of severance taxes.** Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) Twelve percent of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 7.75% must be credited to an account in the state special revenue fund to be allocated by the legislature for local impacts, provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund account, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) (a) *Subject to subsection (7)(b), all other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state.*

(b) *The interest income from \$140 million of the coal severance tax permanent fund that is deposited in the general fund is statutorily appropriated, as provided in 17-7-502, on an annual basis as follows:*

(i) *\$65,000 to the cooperative development center;*

(ii) *\$1.25 million for the growth through agriculture program provided for in Title 90, chapter 9;*

(iii) *\$3.65 million to the research and commercialization state special revenue account created in 90-3-1002;*

(iv) *to the department of commerce:*

(A) *\$125,000 for a small business development center;*

(B) *\$50,000 for a small business innovative research program;*

(C) *\$425,000 for certified communities;*

(D) *\$200,000 for the Montana manufacturing extension center at Montana state university-Bozeman; and*

(E) *\$300,000 for export trade enhancement.”*

**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: 2-15-151; 2-17-105; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-324; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-6-703; 53-24-206; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; ~~90-6-710~~; 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 Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, the inclusion of 15-35-108 and 90-6-710 terminates June 30, 2005; pursuant to sec. 17, Ch. 414, L. 2001, the inclusion of 2-15-151 terminates December 31, 2006; and pursuant to sec. 2, Ch. 594, L. 2001, the inclusion of 17-3-241 becomes effective July 1, 2003.)”

**Section 3.** Section 10, Chapter 10, Special Laws of May 2000, is amended to read:

**“Section 10. Termination.** (1) [Section 1] terminates June 30, 2001.

(2) ~~[Sections 2 through 4]~~ [Sections 2 and 4] terminate June 30, 2005.

(3) [Section 3] terminates June 30, 2010.”

**Section 4. Coordination instruction.** If House Bill No. 76 is passed and approved and if it includes provisions eliminating the certified communities program, the code commissioner is instructed to substitute “certified regional development corporations” for “certified communities” where it appears in [this act], unless the context requires otherwise.

**Section 5. Effective date.** [This act] is effective July 1, 2005.

**Section 6. Termination.** [Section 1] terminates June 30, 2010.

Approved April 24, 2003

## CHAPTER NO. 482

[SB 143]

AN ACT DEFINING "CHARITABLE GIFT ANNUITY", "CHARITABLE ORGANIZATION", AND "QUALIFIED CHARITABLE GIFT ANNUITY"; PROVIDING THAT A QUALIFIED CHARITABLE GIFT ANNUITY IS NOT INSURANCE; REQUIRING THAT CHARITABLE ORGANIZATIONS ENTERING INTO A CHARITABLE GIFT ANNUITY AGREEMENT GIVE NOTICE TO DONORS AND THE STATE AUDITOR; PROVIDING A FINE FOR FAILURE TO GIVE PROPER NOTICES; CONFORMING CHARITABLE GIFT ANNUITY LAWS TO LAWS RELATED TO DEDUCTIONS FOR CHARITABLE CONTRIBUTIONS AND TAX CREDITS FOR CONTRIBUTIONS TO QUALIFIED ENDOWMENTS; AMENDING SECTIONS 15-30-121, 15-30-165, AND 15-31-114, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

**Section 1. Definitions.** In [sections 1 through 5], the following definitions apply:

(1) "Charitable gift annuity" means a transfer of cash or other property by a donor to a charitable organization in return for an annuity payable over one or two lives, for the duration of that life or those lives, under which the actuarial value of the annuity is less than the value of the cash or other property transferred and the difference in value constitutes a charitable deduction for federal tax purposes.

(2) "Charitable organization" means an entity described by:

(a) section 501(c)(3) of the Internal Revenue Code of 1986, 26 U.S.C. 501(c)(3); or

(b) section 170(c) of the Internal Revenue Code of 1986, 26 U.S.C. 170(c).

(3) (a) "Qualified charitable gift annuity" means a charitable gift annuity, described by section 501(m)(5) of the Internal Revenue Code of 1986, 26 U.S.C. 501(m)(5), section 514(c)(5) of the Internal Revenue Code of 1986, 26 U.S.C. 514(c)(5), section 1011(b) of the Internal Revenue Code of 1986, 26 U.S.C. 1011(b), and the implementing regulations, that is issued by a charitable organization that, on the date of the annuity agreement:

(i) has a minimum of \$300,000 net worth or has a minimum of \$100,000 in unrestricted cash, cash equivalents, or publicly traded securities, exclusive of the assets funding the annuity agreement;

(ii) has been in continuous operation for at least 3 years or is a successor or affiliate of a charitable organization that has been in continuous operation for at least 3 years; and

(iii) maintains a separate annuity fund with at least one-half the value of the initial amount transferred for outstanding annuities.



(b) If the charitable organization cannot meet the requirements of subsections (3)(a)(i) through (3)(a)(iii), the issuance of a qualified charitable gift annuity by a charitable organization must be commercially insured by a licensed insurance company that is qualified to do business in Montana.

**Section 2. Charitable gift annuity not insurance.** (1) The issuance of a qualified charitable gift annuity does not constitute engaging in the business of insurance in this state.

(2) A charitable gift annuity issued before [the effective date of this act] is a qualified charitable gift annuity for purposes of [sections 1 through 5], and the issuance of that charitable gift annuity does not constitute engaging in the business of insurance in this state.

**Section 3. Notice to donor.** (1) When entering into an agreement for a qualified charitable gift annuity, the charitable organization shall disclose to the donor, in writing, in the annuity agreement, that a qualified charitable gift annuity is not insurance under the laws of this state and is not subject to regulation by the commissioner or protected by an insurance guaranty association.

(2) The notice provisions required by this section must be in a separate paragraph in print size that is not smaller than that employed in the annuity agreement generally.

**Section 4. Notice to commissioner.** (1) A charitable organization that issues qualified charitable gift annuities shall notify the commissioner in writing within 90 days after [the effective date of this act] or the date on which it enters into the organization's first qualified charitable gift annuity agreement and shall notify the commissioner on March 1 of each year in which the charitable organization issues qualified charitable gift annuities. The notice must:

(a) be signed by an officer or director of the organization;

(b) identify the organization;

(c) certify that:

(i) the organization is a charitable organization; and

(ii) the annuities issued by the organization are qualified charitable gift annuities.

(2) The organization is not required to submit additional information except:

(a) within 30 days of receipt of a written request, to provide the commissioner with financial documents verifying information that was provided to the commissioner in the notice; or

(b) to enable the commissioner to determine appropriate penalties that may be applicable under [section 5].

**Section 5. Failure to provide required notice.** The failure of a charitable organization to comply with the notice requirements imposed under [sections 3 and 4] does not prevent a charitable gift annuity that otherwise meets the requirements of [sections 1 through 5] from constituting a qualified charitable gift annuity. The commissioner may enforce performance of the requirements of [sections 3 and 4] by sending a letter by certified mail, return receipt requested, demanding that the charitable organization comply with the requirements of [sections 3 and 4]. The commissioner may fine the charitable organization in an amount not to exceed \$1,000 for each qualified charitable gift

annuity agreement issued until the time that the charitable organization complies with [sections 3 and 4].

**Section 6.** Section 15-30-121, MCA, is amended to read:

**“15-30-121. Deductions allowed in computing net income.** (1) In computing net income, there are allowed as deductions:

(a) the items referred to in sections 161, including the contributions referred to in 33-15-201(5)(b), and 211 of the Internal Revenue Code of 1954 (26 U.S.C. 161 and 211), or as sections 161 and 211 are labeled or amended, subject to the following exceptions, which are not deductible:

(i) items provided for in 15-30-123;

(ii) state income tax paid;

(iii) premium payments for medical care as provided in subsection (1)(g)(i);

(iv) long-term care insurance premium payments as provided in subsection (1)(g)(ii); and

(v) a charitable contribution using a charitable gift annuity unless the annuity is a qualified charitable gift annuity as defined in [section 1];

(b) federal income tax paid within the tax year;

(c) expenses of household and dependent care services as outlined in subsections (1)(c)(i) through (1)(c)(iii) and (2) and subject to the limitations and rules as set out in subsections (1)(c)(iv) through (1)(c)(vi), as follows:

(i) expenses for household and dependent care services necessary for gainful employment incurred for:

(A) a dependent under 15 years of age for whom an exemption can be claimed;

(B) a dependent as allowable under 15-30-112(5), except that the limitations for age and gross income do not apply, who is unable to provide self-care because of physical or mental illness; and

(C) a spouse who is unable to provide self-care because of physical or mental illness;

(ii) employment-related expenses incurred for the following services, but only if the expenses are incurred to enable the taxpayer to be gainfully employed:

(A) household services that are attributable to the care of the qualifying individual; and

(B) care of an individual who qualifies under subsection (1)(c)(i);

(iii) expenses incurred in maintaining a household if over half of the cost of maintaining the household is furnished by an individual or, if the individual is married during the applicable period, is furnished by the individual and the individual's spouse;

(iv) the amounts deductible in subsections (1)(c)(i) through (1)(c)(iii), subject to the following limitations:

(A) a deduction is allowed under subsection (1)(c)(i) for employment-related expenses incurred during the year only to the extent that the expenses do not exceed \$4,800;

(B) expenses for services in the household are deductible under subsection (1)(c)(i) for employment-related expenses only if they are incurred for services in

the taxpayer's household, except that employment-related expenses incurred for services outside the taxpayer's household are deductible, but only if incurred for the care of a qualifying individual described in subsection (1)(c)(i)(A) and only to the extent that the expenses incurred during the year do not exceed:

- (I) \$2,400 in the case of one qualifying individual;
  - (II) \$3,600 in the case of two qualifying individuals; and
  - (III) \$4,800 in the case of three or more qualifying individuals;
- (v) if the combined adjusted gross income of the taxpayers exceeds \$18,000 for the tax year during which the expenses are incurred, the amount of the employment-related expenses incurred, to be reduced by one-half of the excess of the combined adjusted gross income over \$18,000;
- (vi) for purposes of this subsection (1)(c):
- (A) married couples shall file a joint return or file separately on the same form;
  - (B) if the taxpayer is married during any period of the tax year, employment-related expenses incurred are deductible only if:
    - (I) both spouses are gainfully employed, in which case the expenses are deductible only to the extent that they are a direct result of the employment; or
    - (II) the spouse is a qualifying individual described in subsection (1)(c)(i)(C);
    - (C) an individual legally separated from the individual's spouse under a decree of divorce or of separate maintenance may not be considered as married;
    - (D) the deduction for employment-related expenses must be divided equally between the spouses when filing separately on the same form;
    - (E) payment made to a child of the taxpayer who is under 19 years of age at the close of the tax year and payments made to an individual with respect to whom a deduction is allowable under 15-30-112(5) are not deductible as employment-related expenses;
- (d) in the case of an individual, political contributions determined in accordance with the provisions of section 218(a) and (b) of the Internal Revenue Code (now repealed) that were in effect for the tax year ended December 31, 1978;
- (e) that portion of expenses for organic fertilizer and inorganic fertilizer produced as a byproduct allowed as a deduction under 15-32-303 that was not otherwise deducted in computing taxable income;
- (f) contributions to the child abuse and neglect prevention program provided for in 52-7-101, subject to the conditions set forth in 15-30-156;
- (g) the entire amount of premium payments made by the taxpayer, except premiums deducted in determining Montana adjusted gross income, or for which a credit was claimed under 15-30-128, for:
- (i) insurance for medical care, as defined in 26 U.S.C. 213(d), for coverage of the taxpayer, the taxpayer's dependents, and the parents and grandparents of the taxpayer; and
  - (ii) long-term care insurance policies or certificates that provide coverage primarily for any qualified long-term care services, as defined in 26 U.S.C. 7702B(c), for:

(A) the benefit of the taxpayer for tax years beginning after December 31, 1994; or

(B) the benefit of the taxpayer, the taxpayer's dependents, and the parents and grandparents of the taxpayer for tax years beginning after December 31, 1996;

(h) light vehicle registration fees, as provided for in 61-3-560 through 61-3-562, paid during the tax year; and

(i) per capita livestock fees imposed pursuant to 15-24-921, 15-24-922, 81-6-104, 81-6-204, 81-6-209, 81-7-118, or 81-7-201.

(2) (a) Subject to the conditions of subsection (1)(c), a taxpayer who operates a family day-care home or a group day-care home, as these terms are defined in 52-2-703, and who cares for the taxpayer's own child and at least one unrelated child in the ordinary course of business may deduct employment-related expenses considered to have been paid for the care of the child.

(b) The amount of employment-related expenses considered to have been paid by the taxpayer is equal to the amount that the taxpayer charges for the care of a child of the same age for the same number of hours of care. The employment-related expenses apply regardless of whether any expenses actually have been paid. Employment-related expenses may not exceed the amounts specified in subsection (1)(c)(iv)(B).

(c) Only a day-care operator who is licensed and registered as required in 52-2-721 is allowed the deduction under this subsection (2)."

**Section 7.** Section 15-30-165, MCA, is amended to read:

**"15-30-165. (Temporary) Qualified endowments credit — definitions — rules.** For the purposes of 15-30-166, the following definitions apply:

(1) Subject to subsection (3), "planned gift" means an irrevocable contribution to a permanent endowment held by a tax-exempt organization, or for a tax-exempt organization, when the contribution uses any of the following techniques that are authorized under the Internal Revenue Code:

(a) charitable remainder unitrusts, as defined by 26 U.S.C. 664;

(b) charitable remainder annuity trusts, as defined by 26 U.S.C. 664;

(c) pooled income fund trusts, as defined by 26 U.S.C. 642(c)(5);

(d) charitable lead unitrusts qualifying under 26 U.S.C. 170(f)(2)(B);

(e) charitable lead annuity trusts qualifying under 26 U.S.C. 170(f)(2)(B);

(f) charitable gift annuities undertaken pursuant to 26 U.S.C. 1011(b);

(g) deferred charitable gift annuities undertaken pursuant to 26 U.S.C. 1011(b);

(h) charitable life estate agreements qualifying under 26 U.S.C. 170(f)(3)(B);

(i) paid-up life insurance policies meeting the requirements of 26 U.S.C. 170.

(2) (a) "Qualified endowment" means a permanent, irrevocable fund that is held by a Montana incorporated or established organization that:

(i) is a tax-exempt organization under 26 U.S.C. 501(c)(3); or

(ii) is a bank or trust company, as defined in Title 32, chapter 1, part 1, that is holding the fund on behalf of a tax-exempt organization.

(b) For the purposes of sections 15-30-165 through 15-30-167, the affordable housing revolving loan account established in 90-6-133 is considered to be a qualified endowment.

(3) (a) A contribution using a technique described in subsection (1)(a) or (1)(b) is not a planned gift unless the trust agreement provides that the trust may not terminate and the beneficiaries' interest in the trust may not be assigned or contributed to the qualified endowment sooner than the earlier of:

- (i) the date of death of the beneficiaries; or
- (ii) 5 years from the date of the contribution.

(b) A contribution using the technique described in subsection (1)(g) is not a planned gift unless the payment of the annuity is required to begin within the life expectancy of the annuitant or of the joint life expectancies of the annuitants, if more than one annuitant, as determined using the actuarial tables adopted by rule by the department in effect on the date of the contribution.

(c) A contribution using a technique described in subsection (1)(f) or (1)(g) is not a planned gift unless the annuity agreement provides that the interest of the annuitant or annuitants in the gift annuity may not be assigned to the qualified endowment sooner than the earlier of:

- (i) the date of death of the annuitant or annuitants; or
- (ii) 5 years after the date of the contribution.

(d) *A contribution using a technique described in subsection (1)(f) or (1)(g) is not a planned gift unless the annuity is a qualified charitable gift annuity as defined in [section 1].*

(4) The department shall adopt rules to prepare life expectancy tables that are derived from the actuarial tables contained in the most recent Publication 1457 by the internal revenue service. (Subsection (2)(b) terminates December 31, 2004—sec. 7, Ch. 411, L. 2001; section terminates December 31, 2007—sec. 5, Ch. 226, L. 2001.)”

**Section 8.** Section 15-31-114, MCA, is amended to read:

**“15-31-114. Deductions allowed in computing income.** (1) In computing the net income, the following deductions are allowed from the gross income received by the corporation within the year from all sources:

(a) all the ordinary and necessary expenses paid or incurred during the taxable year in the maintenance and operation of its business and properties, including reasonable allowance for salaries for personal services actually rendered, subject to the limitation contained in this section, and rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title or in which it has no equity. A deduction is not allowed for salaries paid upon which the recipient has not paid Montana state income tax. However, when domestic corporations are taxed on income derived from outside the state, salaries of officers paid in connection with securing the income are deductible.

(b) (i) all losses actually sustained and charged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for the wear and tear and obsolescence of property used in the trade or business. The allowance is determined according to the provisions of section 167 of the Internal Revenue Code in effect with respect to the taxable year. All elections for

depreciation must be the same as the elections made for federal income tax purposes. A deduction is not allowed for any amount paid out for any buildings, permanent improvements, or betterments made to increase the value of any property or estate, and a deduction may not be made for any amount of expense of restoring property or making good the exhaustion of property for which an allowance is or has been made. A depreciation or amortization deduction is not allowed on a title plant as defined in 33-25-105(15).

(ii) There is allowed as a deduction for the taxable period a net operating loss deduction determined according to the provisions of 15-31-119.

(c) in the case of mines, other natural deposits, oil and gas wells, and timber, a reasonable allowance for depletion and for depreciation of improvements. The reasonable allowance must be determined according to the provisions of the Internal Revenue Code in effect for the taxable year. All elections made under the Internal Revenue Code with respect to capitalizing or expensing exploration and development costs and intangible drilling expenses for corporation license tax purposes must be the same as the elections made for federal income tax purposes.

(d) the amount of interest paid within the year on its indebtedness incurred in the operation of the business from which its income is derived. Interest may not be allowed as a deduction if paid on an indebtedness created for the purchase, maintenance, or improvement of property or for the conduct of business unless the income from the property or business would be taxable under this part.

(e) (i) taxes paid within the year, except the following:

(A) taxes imposed by this part;

(B) taxes assessed against local benefits of a kind tending to increase the value of the property assessed;

(C) taxes on or according to or measured by net income or profits imposed by authority of the government of the United States;

(D) taxes imposed by any other state or country upon or measured by net income or profits.

(ii) Taxes deductible under this part must be construed to include taxes imposed by any county, school district, or municipality of this state.

(f) that portion of an energy-related investment allowed as a deduction under 15-32-103;

(g) (i) except as provided in subsection (1)(g)(ii) or (1)(g)(iii), charitable contributions and gifts that qualify for deduction under section 170 of the Internal Revenue Code, as amended.

(ii) The public service commission may not allow in the rate base of a regulated corporation the inclusion of contributions made under this subsection.

(iii) *A deduction is not allowed for a charitable contribution using a charitable gift annuity unless the annuity is a qualified charitable gift annuity as defined in [section 1].*

(h) per capita livestock fees imposed pursuant to 15-24-921, 15-24-922, 81-6-104, 81-6-204, 81-6-209, 81-7-118, or 81-7-201.

(2) In lieu of the deduction allowed under subsection (1)(g), the taxpayer may deduct the fair market value, not to exceed 30% of the taxpayer's net

income, of a computer or other sophisticated technological equipment or apparatus intended for use with the computer donated to an elementary, secondary, or accredited postsecondary school located in Montana if:

(a) the contribution is made no later than 5 years after the manufacture of the donated property is substantially completed;

(b) the property is not transferred by the donee in exchange for money, other property, or services; and

(c) the taxpayer receives a written statement from the donee in which the donee agrees to accept the property and representing that the use and disposition of the property will be in accordance with the provisions of subsection (2)(b).

(3) In the case of a regulated investment company or a fund of a regulated investment company, as defined in section 851(a) or 851(h) of the Internal Revenue Code of 1986, as that section may be amended or renumbered, there is allowed a deduction for dividends paid, as defined in section 561 of the Internal Revenue Code of 1986, as that section may be amended or renumbered, except that the deduction for dividends is not allowed with respect to dividends attributable to any income that is not subject to tax under this chapter when earned by the regulated investment company. For the purposes of computing the deduction for dividends paid, the provisions of sections 852(b)(7) and 855 of the Internal Revenue Code of 1986, as those sections may be amended or renumbered, apply. A regulated investment company is not allowed a deduction for dividends received as defined in sections 243 through 245 of the Internal Revenue Code of 1986, as those sections may be amended or renumbered."

**Section 9. Codification instruction.** [Sections 1 through 5] are intended to be codified as an integral part of Title 33, chapter 20, and the provisions of Title 33, chapter 20, apply to [sections 1 through 5].

**Section 10. Effective date.** [This act] is effective on passage and approval.

**Section 11. Applicability.** [This act] applies to charitable contributions made after [the effective date of this act].

Approved April 24, 2003

## CHAPTER NO. 483

[SB 194]

AN ACT AUTHORIZING WATER ADMINISTRATION INTERIM AGREEMENTS TO PROVIDE FOR JOINT TRIBAL AND STATE ADMINISTRATION OF NEW WATER USES ON A RESERVATION PENDING FINAL ADJUDICATION OF INDIAN RESERVED WATER RIGHTS IF A COURT OF COMPETENT JURISDICTION HAS HELD THAT THE DEPARTMENT LACKS EXCLUSIVE AUTHORITY TO ISSUE NEW WATER USE PERMITS WITHIN THE EXTERIOR BOUNDARIES OF THE RESERVATION; AMENDING SECTION 85-2-708, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 85-2-708, MCA, is amended to read:

**“85-2-708. Water administration interim agreements within Indian reservations.** (1) Because it appears to be to the common advantage of the state and Indian tribes to cooperate in matters involving the permitting and use of water within the exterior boundaries of an Indian reservation prior to the final adjudication of Indian reserved water rights and because the state does not intend by enactment of this section to limit, expand, alter, or waive state jurisdiction to administer water rights within the exterior boundaries of an Indian reservation, pursuant to the requirements of Title 18, chapter 11, the department may negotiate and conclude an interim agreement with the tribal government of any Indian tribe in Montana prior to final adjudication of Indian reserved water rights for the purpose of implementing a water administration plan and a permitting process for the issuance of water rights and changes in water right uses within the exterior boundaries of an Indian reservation.

(2) ~~An~~ *Subject to subsection (4), an agreement entered into pursuant to subsection (1) must:*

(a) provide for the retention of exclusive authority by the state to issue permits to applicants who are not members of the tribe and to issue change of use authorizations;

(b) provide that any permits must be issued in accordance with the criteria established by state law; and

(c) provide that permits may be only for new uses with a date of priority in compliance with state law.

(3) Prior to concluding any agreement under this section, the department shall hold public meetings, after proper public notice of the meetings has been given and the proposed agreement has been made available for public review, to afford the public an opportunity to comment on the contents of the agreement.

(4) *The provisions of subsection (2) do not apply if a court of competent jurisdiction has held that the department lacks exclusive authority to issue new water use permits within the exterior boundaries of an Indian reservation pending final adjudication of Indian reserved water rights. In that case, the department, with the approval of the governor, may enter into an interim agreement that provides for joint tribal and state administration of new water uses on the reservation pending final adjudication of Indian reserved water rights. Any interim agreement entered into pursuant to this subsection (4):*

(a) *must address how and whether new ground water uses for domestic and municipal purposes will be granted. Except for the criterion in 85-2-311(1)(a)(ii), an interim agreement that grants new ground water uses must establish criteria for new water uses that incorporate the criteria listed in 85-2-311.*

(b) *must address how and whether changes in existing appropriation rights within the exterior boundaries of the reservation will be granted. An interim agreement that grants changes must establish criteria for changes in existing appropriation rights that incorporate the criteria listed in 85-2-402.*

(c) *must address how and whether water use will be authorized under the interim agreement and how the use will be secure and valid in the event of the termination of the interim agreement, quantification of reserved water rights, or termination of negotiations of reserved water rights under 85-2-704;*

(d) *must maintain the jurisdictional claims of each party to the interim agreement;*



(e) must protect each party against a waiver of the right to challenge the claims of each party at any time;

(f) may not prejudice the regulatory or adjudicatory jurisdiction of either party;

(g) must provide that none of the activities of each party in the negotiation or implementation of an interim agreement may be used to affect the equitable or legal position of either party in any future litigation; and

(h) must provide that nothing in the negotiation or implementation of an interim agreement may be considered as enlarging or diminishing the jurisdiction or authority of either party within the reservation.”

**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 band of Chippewa.

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

Approved April 24, 2003

## CHAPTER NO. 484

[SB 230]

AN ACT ADOPTING THE MONTANA PRUDENT INVESTOR RULE; PROVIDING STANDARDS OF CARE AND DUTIES OF TRUSTEES IN MAKING INVESTMENTS AND MANAGING TRUST ASSETS; AMENDING SECTIONS 72-34-113 AND 72-34-114, MCA; AND REPEALING SECTION 72-34-121, MCA.

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

**Section 1. Short title.** [Sections 1 through 9] and 72-34-104 constitute the Montana prudent investor rule and may be cited as the “Montana Uniform Prudent Investor Act”.

**Section 2. Compliance — duty of trustee — exception — liability.** (1) The trustee has a duty to administer the trust solely in the interest of the beneficiaries. Except as provided in subsection (2), a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule.

(2) The trustor may expand or restrict the prudent investor rule by express provisions in the trust instrument. A trustee is not liable to a beneficiary for the trustee’s good faith reliance on these express provisions.

**Section 3. Standard of care — investments and management — considerations.** (1) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

(2) A trustee’s investment and management decisions respecting individual assets and courses of action must be evaluated not in isolation, but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(3) Among circumstances that are appropriate to consider in investing and managing trust assets are the following, to the extent relevant to the trust or its beneficiaries:

- (a) general economic conditions;
- (b) the possible effect of inflation or deflation;
- (c) the expected tax consequences of investment decisions or strategies;
- (d) the role that each investment or course of action plays within the overall trust portfolio;
- (e) the expected total return from income and the appreciation of capital;
- (f) other resources of the beneficiaries known to the trustee as determined from information provided by the beneficiaries;
- (g) needs for liquidity, regularity of income, and preservation or appreciation of capital; and
- (h) an asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

(4) A trustee shall make a reasonable effort to ascertain facts relevant to the investment and management of trust assets.

(5) A trustee may invest in any kind of property or type of investment or engage in any course of action or investment strategy consistent with the standards of [sections 1 through 9] and 72-34-104.

**Section 4. Diversification — duty of trustee — exception.** (1) Subject to subsection (2), in making and implementing investment decisions, the trustee has a duty to diversify the investments of the trust unless, under the circumstances, it is not prudent to do so.

(2) If trust assets include farm or ranch property, a closely held family business, timber interests, or interests in oil, gas, or minerals, the trustee may elect to retain those assets unless otherwise directed by a majority of adult trust beneficiaries. A trustee's exercise of discretion to retain assets of the character described in this subsection is not a breach of the trustee's duty to diversify investments.

**Section 5. Review of assets — time for compliance.** Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust and with the requirements of [sections 1 through 9] and 72-34-104.

**Section 6. Costs — incurrence.** In investing and managing trust assets, a trustee may incur only costs that are appropriate and reasonable in relation to the assets, overall investment strategy, purposes, and other circumstances of the trust.

**Section 7. Compliance determinations — standards.** Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

**Section 8. Delegation of investment and management functions — standards of care — trustees and agents — liability — jurisdiction.** (1) A

trustee may delegate investment and management functions as prudent under the circumstances. The trustee shall exercise prudence in the following:

- (a) selecting an agent;
- (b) establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and
- (c) periodically reviewing the agent's overall performance and compliance with the terms of the delegation.

(2) In performing a delegated function, an agent has a duty to exercise reasonable care to comply with the terms of the delegation.

(3) Except as otherwise provided in 72-34-502, a trustee who complies with the requirements of subsection (1) of this section is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.

(4) By accepting the delegation of a trust function from the trustee of a trust that is subject to the law of this state, an agent submits to the jurisdiction of the courts of this state.

**Section 9. Interpretation of trust terms construing legal investments.** The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, must be construed as authorizing any investment or strategy permitted under [sections 1 through 9] and 72-34-104: "investments permissible by law for investment of trust funds", "legal investments", "authorized investments", "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital", "prudent man rule", "prudent trustee rule", "prudent person rule", and "prudent investor rule".

**Section 10.** Section 72-34-113, MCA, is amended to read:

**"72-34-113. Duty not to delegate entire administration of trust.** (1) The trustee has a duty not to delegate *to others the performance of acts that the trustee can reasonably be required personally to perform and may not transfer the office of trustee to another person or delegate the entire administration of the trust to a cotrustee or other person.*

~~(2) A trustee may delegate investment, management, and administrative functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:~~

- ~~(a) selecting an agent;~~
- ~~(b) establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust;~~
- ~~(c) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.~~

~~(3) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.~~

~~(4) A trustee who complies with the requirements of subsection (2) is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.~~

~~(5) By accepting the delegation of a trust function from the trustee of a trust that is subject to the laws of this state, an agent submits to the jurisdiction of the courts of this state.~~

~~(2) In a case in which a trustee has properly delegated a matter to an agent, cotrustee, or other person, the trustee has a duty to exercise general supervision over the person performing the delegated matter.~~

~~(3) This section does not apply to investment and management functions under [section 8].”~~

**Section 11.** Section 72-34-114, MCA, is amended to read:

**“72-34-114. Duty to use ordinary skill and prudence.** (1) The trustee shall administer the trust with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person would use to accomplish the purposes of the trust as determined from the trust instrument.

~~(2) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.~~

~~(3) A trustee’s investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of a trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.~~

~~(4) Among circumstances that a trustee shall consider in investing and managing trust assets are any of the following that are relevant to the trust or its beneficiaries:~~

~~(a) general economic conditions;~~

~~(b) the possible effect of inflation or deflation;~~

~~(c) the expected tax consequences of investment decisions or strategies;~~

~~(d) the role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;~~

~~(e) the expected total return from income and the appreciation of the capital;~~

~~(f) other resources of the beneficiaries;~~

~~(g) needs for liquidity, regularity of income, and preservation or appreciation of capital; and~~

~~(h) an asset’s special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.~~

~~(5) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.~~

~~(6) A trustee may invest in any kind of property or type of investment consistent with the standards of this section.~~

~~(7)(2)~~ The trustor may expand or restrict the standards provided in ~~subsections subsection (1) through (6)~~ by express provisions in the trust instrument. A trustee is not liable to a beneficiary for the trustee’s reliance on these express provisions.

~~(3)~~(3) Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

(4) *This section does not apply to investment and management functions governed by the Montana Uniform Prudent Investor Act, as set forth in [sections 1 through 9] and 72-34-104.*"

**Section 12. Repealer.** Section 72-34-121, MCA, is repealed.

**Section 13. Codification instruction.** [Sections 1 through 9] are intended to be codified as an integral part of Title 72, chapter 34, and the provisions of Title 72, chapter 34, apply to [sections 1 through 9].

**Section 14. Instruction to code commissioner.** The code commissioner shall renumber 72-34-104 as an integral part of [sections 1 through 9].

Approved April 24, 2003

## CHAPTER NO. 485

[SB 232]

AN ACT TRANSFERRING THE MONTANA HERITAGE PRESERVATION AND DEVELOPMENT COMMISSION TO THE DEPARTMENT OF COMMERCE FOR ADMINISTRATIVE PURPOSES; ALLOWING NEGOTIATIONS FOR AN INDIRECT ADMINISTRATIVE RATE; AMENDING SECTION 22-3-1002, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 22-3-1002, MCA, is amended to read:

**"22-3-1002. Montana heritage preservation and development commission.** (1) There is a Montana heritage preservation and development commission. The commission is attached to the ~~Montana historical society~~ *department of commerce* for administrative purposes *only, pursuant to 2-15-121. The commission and the department shall negotiate a specific indirect administrative rate annually, with biennial review by a designated, appropriate legislative interim committee.*

(2) The commission consists of 14 members. The members shall broadly represent the state. Nine members must be appointed by the governor, one member must be appointed by the president of the senate, and one member must be appointed by the speaker of the house. The director of the Montana historical society, the director of the department of fish, wildlife, and parks, and the director of the department of commerce shall serve as members.

~~(2)~~ Of the members appointed by the governor:

(a) one member must have extensive experience in managing facilities that cater to the needs of tourists;

(b) one member must have experience in community planning;

(c) one member must have experience in historic preservation;

(d) two members must have broad experience in business;

(e) one member must be a member of the tourism advisory council established in 2-15-1816;

- (f) one member must be a Montana historian; and
- (g) two members must be from the public at large.

(3) Except for the initial appointments, members appointed by the governor shall serve 3-year terms. Legislative appointees shall serve 2-year terms. If a vacancy occurs, the appointing authority shall make an appointment for the unexpired portion of the term.

(4) (a) The commission may employ:

(i) an executive director who has general responsibility for the selection and management of commission staff, developing recommendations for the purchase of property, and overseeing the management of acquired property;

(ii) a curator who is responsible for the display and preservation of the acquired property; and

(iii) other staff that the commission and the executive director determine are necessary to manage and operate commission properties.

(b) The commission shall prescribe the duties and annual salary of the executive director, the curator, and other commission staff."

**Section 2. Effective date.** [This act] is effective July 1, 2003.

Approved April 24, 2003

## CHAPTER NO. 486

[SB 282]

AN ACT REQUIRING THAT TEMPORARY TOTAL DISABILITY BENEFITS NOT BE PAID FOR THE LESSER OF EITHER THE FIRST 32 HOURS OR 4 DAYS' LOSS OF WAGES IF A CLAIMANT IS TOTALLY DISABLED AND UNABLE TO WORK FOR 5 OR MORE DAYS BECAUSE OF AN INJURY; AMENDING SECTION 39-71-736, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

**Section 1.** Section 39-71-736, MCA, is amended to read:

**"39-71-736. Compensation — from what dates paid.** (1) (a) ~~Compensation~~ Compensation may not be paid for the first ~~40~~ 32 hours or ~~5~~ 4 days' loss of wages, whichever is less, that the claimant is totally disabled and unable to work ~~due to~~ because of an injury. A claimant is eligible for compensation starting with the ~~6th~~ 5th day.

(b) Separate benefits of medical and hospital services must be furnished from the date of injury.

(2) For the purpose of this section, except as provided in subsection (3), an injured worker is not considered to be entitled to compensation benefits if the worker is receiving sick leave benefits, except that each day for which the worker elects to receive sick leave counts 1 day toward the ~~5-day~~ 4-day waiting period.

(3) Augmentation of temporary total disability benefits with sick leave by an employer pursuant to a collective bargaining agreement may not disqualify a worker from receiving temporary total disability benefits.

(4) Receipt of vacation leave by an injured worker may not affect the worker's eligibility for temporary total disability benefits."

**Section 2. Effective date — applicability.** [This act] is effective July 1, 2003, and applies to injuries occurring on or after July 1, 2003.

Approved April 24, 2003

## CHAPTER NO. 487

[SB 288]

AN ACT REVISING THE COUNTY COMPENSATION BOARD; ALLOWING TWO TO FOUR TAXPAYER MEMBERS; CLARIFYING THAT A CHARTER COUNTY AND A CHARTER, CONSOLIDATED CITY-COUNTY ARE NOT REQUIRED TO CREATE A COUNTY COMPENSATION BOARD; AND AMENDING SECTION 7-4-2503, MCA.

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

**Section 1.** Section 7-4-2503, MCA, is amended to read:

**"7-4-2503. Salary schedule for certain county officers — county compensation board.** (1) (a) The salary paid to the county treasurer, county clerk and recorder, clerk of the district court, county assessor, county superintendent of schools, county sheriff, county surveyor in counties where county surveyors receive salaries as provided in 7-4-2812, justice of the peace, and county auditor in all counties where the office is authorized must be established by the county governing body based upon the recommendations of the county compensation board provided for in subsection (4).

(b) The annual salary established pursuant to subsection (1)(a) must be uniform for all county officers referred to in subsection (1)(a).

(2) (a) An elected county superintendent of schools must receive, in addition to the salary based upon subsection (1), the sum of \$400 a year, except that an elected county superintendent of schools who holds a master of arts degree or a master's degree in education, with an endorsement in school administration, from a unit of the Montana university system or an equivalent institution may, at the discretion of the county commissioners, receive, in addition to the salary based upon subsection (1), up to \$2,000 a year.

(b) The county sheriff must receive, in addition to the salary based upon subsection (1), the sum of \$2,000 a year.

(c) The county sheriff must receive a longevity payment amounting to 1% of the salary determined under subsection (1) for each year of service with the sheriff's department, but years of service during any year in which the salary was set at the level of the salary of the prior fiscal year may not be included in any calculation of longevity increases. The additional salary amount provided for in this subsection may not be included in the salary for purposes of computing the compensation for undersheriffs and deputy sheriffs as provided in 7-4-2508.

(3) (a) In each county with a population in excess of 30,000, the county attorney must be a full-time official under 7-4-2704, and the salary is \$50,000 a year, subject to adjustment as provided in subsection (3)(c). In counties with a population less than 30,000, the county attorney who is a part-time official is

entitled to receive an annual base salary equal to the salary received for the fiscal year ending June 30, 2001.

(b) In those counties where the office of the county attorney has been established as a full-time position pursuant to 7-4-2706, the salary of the county attorney is the same as that established for full-time county attorneys in subsection (3)(a).

(c) Each county attorney is entitled to an increase in salary based upon the schedule developed and approved by the county compensation board as provided in subsection (4).

(d) (i) After completing 4 years of service as deputy county attorney, each deputy county attorney is entitled to an increase in salary of \$1,000 on the anniversary date of employment as deputy county attorney. After completing 5 years of service as deputy county attorney, each deputy county attorney is entitled to an additional increase in salary of \$1,500 on the anniversary date of employment. After completing 6 years of service as deputy county attorney and for each year of additional service up to completion of the 11th year of service, each deputy county attorney is entitled to an additional annual increase in salary of \$500.

(ii) The years of service as a deputy county attorney accumulated prior to July 1, 1985, must be included in the calculation of the longevity increase.

(4) (a) There is a county compensation board consisting of the county commissioners, three of the county officials described in subsection (1) appointed by the board of county commissioners, the county attorney, and ~~two~~ *two to four* resident taxpayers appointed initially by the board of county commissioners to staggered terms of 3 years, with the initial appointments of ~~one~~ *one or two* taxpayer ~~member~~ *members* for a 2-year term and ~~one~~ *one or two* taxpayer ~~member~~ *members* for a 3-year term. The county compensation board shall hold hearings annually for the purpose of reviewing the compensation paid to county officers. The county compensation board may consider the compensation paid to comparable officials in other Montana counties, other states, state government, federal government, and private enterprise.

(b) The county compensation board shall prepare a compensation schedule for the elected county officials, including the county attorney, for the succeeding fiscal year. The schedule must take into consideration county variations, including population, the number of residents living in unincorporated areas, assessed valuation, motor vehicle registrations, building permits, and other factors considered necessary to reflect the variations in the workloads and responsibilities of county officials as well as the tax resources of the county.

(c) A recommended compensation schedule requires a majority vote of the county compensation board, and at least two county commissioners must be included in the majority. A recommended compensation schedule may not reduce the salary of a county officer that was in effect on May 1, 2001.

(d) *The provisions of this subsection (4) do not apply to a county that has adopted a charter form of government or to a charter, consolidated city-county government.*"

Approved April 24, 2003



**CHAPTER NO. 488**

[SB 321]

AN ACT CHANGING THE MEMBERSHIP OF THE WATER POLLUTION CONTROL ADVISORY COUNCIL; AMENDING SECTION 2-15-2107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 2-15-2107, MCA, is amended to read:

**“2-15-2107. Water pollution control advisory council.** (1) There is a water pollution control advisory council.

(2) The council consists of ~~eleven~~ 11 members. The members are *appointed by the governor and include:*

- ~~(a) the director of fish, wildlife, and parks;~~
  - ~~(b) the administrator of the water resources division of the department of natural resources and conservation;~~
  - ~~(c) the director of agriculture;~~
  - ~~(d) eight members appointed by the governor as follows:~~
    - ~~(i)(a) a representative of industry concerned with the disposal of inorganic waste;~~
    - ~~(ii)(b) a representative of industry concerned with the disposal of organic waste;~~
    - ~~(iii) a livestock feeder;~~
    - ~~(iv) a representative of municipal government;~~
    - ~~(v) a representative of an organization concerned with fishing for sport;~~
    - ~~(vi) a representative from labor;~~
    - ~~(vii)(c) a supervisor of a soil and water conservation district;~~
    - ~~(viii) a representative of an organization concerned with water recreation.~~
  - (d) an irrigated agriculture representative;*
  - (e) a production agriculture representative;*
  - (f) a person serving as public works director, director of public utilities, wastewater or public works superintendent, plant manager, or operator in charge of a publicly owned treatment works;*
  - (g) a conservation organization representative;*
  - (h) a realtor or developer representative;*
  - (i) a licensed professional engineer with experience in sanitary engineering;*
  - (j) a fisheries biologist; and*
  - (k) a member of the public.*
- (3) The appointed council members serve at the pleasure of the governor.
- (4) Subsections (5) through (8) of 2-15-122 apply to the council and members.”

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

Approved April 24, 2003

**CHAPTER NO. 489**

[SB 337]

AN ACT REVISING THE CIVIL LIABILITY OF BUSINESSES AND SOCIAL HOSTS FOR INJURIES INVOLVING ALCOHOL CONSUMPTION; ESTABLISHING CRITERIA GOVERNING LIABILITY; PROVIDING THAT THE JURY OR TRIER OF FACT MAY CONSIDER THE CONSUMPTION OF ALCOHOL IN ADDITION TO THE SALE OR SERVICE IN DETERMINING THE CAUSE OF ANY INJURY OR DAMAGE; PROVIDING THAT NO CIVIL ACTION MAY BE BROUGHT BY THE PERSON CONSUMING THE ALCOHOLIC BEVERAGE UNLESS THE CONSUMER WAS A MINOR OR WAS COERCED; PROVIDING THAT A CIVIL ACTION MUST BE COMMENCED WITHIN 2 YEARS OF THE SERVICE; LIMITING NONECONOMIC AND PUNITIVE DAMAGES; ALLOWING CRIMINAL AND INTENTIONAL ACTS OF A PERSON CAUSING AN INJURY TO BE ADMITTED INTO EVIDENCE; AMENDING SECTION 27-1-710, 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 27-1-710, MCA, is amended to read:

**“27-1-710. Civil liability for injuries involving alcohol consumption.**

(1) The purpose of this section is to set statutory criteria governing the liability of a person or entity that furnishes an alcoholic beverage for injury or damage arising from an event involving the person who consumed the beverage.

(2) Except as provided in 16-6-305, a person or entity furnishing an alcoholic beverage may not be found liable for injury or damage arising from an event involving the consumer wholly or partially on the basis of a provision or a violation of a provision of Title 16.

(3) Furnishing a person with an alcoholic beverage is not a cause of, or grounds for finding the furnishing person or entity liable for, injury or damage wholly or partly arising from an event involving the person who consumed the beverage unless:

(a) the consumer was under the legal drinking age and the furnishing person knew that the consumer was underage or did not make a reasonable attempt to determine the consumer's age;

(b) the consumer was visibly intoxicated; or

(c) the furnishing person forced or coerced the consumption or told the consumer that the beverage contained no alcohol.

(4) *A jury or trier of fact may consider the consumption of an alcoholic beverage in addition to the sale, service, or provision of the alcoholic beverage in determining the cause of injuries or damages inflicted upon another by the consumer.*

(5) *A civil action may not be brought pursuant to subsection (3) by the consumer or by the consumer's estate, legal guardian, or dependent, unless:*

(a) *the consumer was under the legal age and the furnishing person knew or should have known that the consumer was under age; or*

(b) *the furnishing person forced or coerced the consumption or told the consumer that the beverage contained no alcohol while knowing that it did contain alcohol.*

(6) *A civil action may not be commenced under this section against a person who furnished alcohol unless the person bringing the civil action provides notice of an intent to file the action to the person who furnished the alcohol by certified mail within 180 days from the date of sale or service. The civil action must be commenced pursuant to this section within 2 years after the sale or service.*

(7) *In any civil action brought pursuant to this section, the total liability for noneconomic damages may not exceed \$250,000.*

(8) *In any civil action brought pursuant to this section, the total liability for punitive damages may not exceed \$250,000.*

(9) *Evidence of intentional or criminal activity by a person causing injury in connection with any event or injury commenced pursuant to this part is admissible in any action brought pursuant to this section."*

**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.

**Section 4. Effective date.** [This act] is effective on passage and approval.

**Section 5. Applicability.** [This act] applies to all proceedings begun after [the effective date of this act].

Approved April 24, 2003

## CHAPTER NO. 490

[SB 400]

AN ACT REVISING THE RAILROAD VANDALISM PREVENTION ACT; REDUCING THE PENALTIES; INCREASING FROM \$500 TO \$1,000 THE AMOUNT OF PROPERTY DAMAGE NEEDED TO MAKE THE OFFENSE A FELONY; MAKING THE ACT PERMANENT; AMENDING SECTION 69-14-1205, MCA; REPEALING SECTION 8, CHAPTER 432, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 69-14-1205, MCA, is amended to read:

**"69-14-1205. ~~(Temporary)~~ Intentional vandalism to railroad property.** (1) A person commits the offense of intentional vandalism to railroad property if the person knowingly or purposely vandalizes railroad property.

(2) A person convicted of intentional vandalism to railroad property must be ordered to make restitution to the railroad carrier in the amount of the cost to repair any railroad property damaged, the cost of any train or shipment delay, and the cost of any accident or damage resulting from the vandalism.

(3) (a) A person convicted of the offense of intentional vandalism to railroad property in which the damage to railroad property does not exceed ~~\$500~~ \$1,000 and in which there is no bodily injury to another person as a result of the offender's actions shall be fined an amount not to exceed ~~\$10,000~~ \$1,000 or be incarcerated *in the county jail* for a term not to exceed ~~10 years~~ 6 months, or both.

(b) A person convicted of the offense of intentional vandalism to railroad property in which the damage to railroad property exceeds ~~\$500~~ \$1,000 or in which there is bodily injury to another person as a result of the offender's actions shall be fined an amount not to exceed ~~\$20,000~~ \$10,000 or be incarcerated for a term not to exceed ~~20~~ 10 years, or both.

(c) A person convicted of the offense of intentional vandalism to railroad property that results in serious bodily injury to another person as a result of the offender's actions shall be fined an amount not to exceed ~~\$25,000~~ \$20,000 or be incarcerated in a state prison for ~~any a term of not to exceed 20 years or for life, or both, except as provided in 46-18-219 and 46-18-222.~~

(d) A person convicted of the offense of intentional vandalism to railroad property that results in the death of another person as a result of the offender's actions shall be fined an amount not to exceed ~~\$100,000~~ \$50,000 or be incarcerated in a state prison for ~~any a term of not to exceed 40 years or for life, or both, except as provided in 46-18-219 and 46-18-222. (Terminates April 30, 2003 - sec. 8, Ch. 432, L. 2001.)~~

**Section 2. Repealer.** Section 8, Chapter 432, Laws of 2001, is repealed.

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

Approved April 24, 2003

## CHAPTER NO. 491

[SB 401]

AN ACT REVISING AND EXPANDING THE MEMBERSHIP OF THE BOARD OF VETERANS' AFFAIRS; SPECIFYING THE DUTIES OF THE BOARD; PROVIDING RULEMAKING AUTHORITY FOR THE BOARD; ESTABLISHING A STATE SPECIAL REVENUE ACCOUNT AND A FEDERAL SPECIAL REVENUE ACCOUNT TO BE USED FOR VETERANS' SERVICES; AUTHORIZING THE BOARD TO SPONSOR PATRIOTIC LICENSE PLATES; AUTHORIZING COUNTIES TO PROVIDE FOR VETERANS' SERVICE OFFICERS; ALLOWING THE BOARD TO ACCEPT FEDERAL FUNDS AND DONATIONS; SPECIFYING THE ACCOUNT TO WHICH DONATIONS ARE DEPOSITED; TRANSFERRING FROM THE DEPARTMENT OF MILITARY AFFAIRS TO THE BOARD THE OVERSIGHT OF AND RULEMAKING AUTHORITY FOR STATE VETERANS' CEMETERIES; AUTHORIZING ADDITIONAL VETERANS' CEMETERIES; TRANSFERRING FROM THE DEPARTMENT OF MILITARY AFFAIRS TO THE BOARD OF VETERANS' AFFAIRS THE OVERSIGHT OF A SPECIAL REVENUE ACCOUNT FOR VETERANS' CEMETERIES; ALLOWING INCOME TAX DEDUCTIONS FOR CONTRIBUTIONS TO STATE VETERANS' SERVICES; REVISING CERTAIN VEHICLE LICENSE PLATE REGISTRATION FEES TO BENEFIT STATE VETERANS' SERVICES; AMENDING SECTIONS 2-15-1205, 10-2-102, 10-2-106, 10-2-601, 10-2-602,

10-2-603, 15-1-122, AND 61-3-321, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

WHEREAS, the 57th Legislature requested a study of veterans' issues, and the State Administration and Veterans' Affairs Interim Committee conducted numerous hearings, received expert testimony, and examined research during a 14-month period; and

WHEREAS, the Interim Committee found that, using 2000 data, Montana's population of nearly 107,000 veterans and an estimated 170,000 family members of veterans not only ranks Montana second in the nation in the number of veterans per capita (11.9%) but also means that veterans and their family members constitute more than 25% of Montana's total population; and

WHEREAS, the Interim Committee found that more than 80,000 Montana veterans are combat-era veterans (more than 36,000 are Vietnam-era, more than 16,000 are Persian Gulf-era, more than 16,000 are World War II-era, and about 14,000 are Korean-era veterans) and that the largest group of veterans is now between 50 and 65 years of age; and

WHEREAS, the U.S. Department of Veterans Affairs estimates that more than 50% of combat theater veterans suffer from clinically serious and disabling posttraumatic stress disorder, that twice as many veterans as nonveterans experience homelessness, that many veterans have overlapping and complex needs encompassing medical and nursing home care, mental health and chemical dependency counseling, housing, transportation, education and training, job services, and family support services, and that the children and families of veterans who do not get the help that they need are themselves at risk; and

WHEREAS, these complex needs and a maze of federal, state, local, public, and private services demand a high level of interagency coordination and cooperation for effective service delivery to ensure that veterans and their families do not fall through the cracks and to avoid unnecessary cost-shifting from federal to state and local public assistance programs; and

WHEREAS, the Interim Committee found that current statutory language establishing the Board of Veterans' Affairs as the lead agency for veterans' affairs dates back to 1919 and that although the Board's duties and responsibilities have consistently evolved, statutory language has not kept pace; and

WHEREAS, the Board hires and supervises its own classified employees, who make up the Montana Veterans' Affairs Division, but the Board does not have rulemaking authority to implement programs; and

WHEREAS, the Board is administratively attached to the Department of Military Affairs, which has greatly assisted veterans and supported the Board but has no statutory authority over veterans' affairs; and

WHEREAS, a legislative performance audit requested by the Interim Committee revealed that although the Montana Veterans' Affairs Division is to be commended for doing a great job with limited resources and limited statutory guidance, it also revealed that new management tools and updated information management systems are needed to provide more consistency and to track and manage staff workload; and

WHEREAS, the U.S. Department of Veterans Affairs spent about \$175 million in Montana during fiscal year 2000, which ranked Montana 37th

nationwide in per capita expenditures by the U.S. Department of Veterans Affairs on veterans; and

WHEREAS, the Interim Committee found that a statutory restructuring of powers, duties, and responsibilities for state veterans' affairs programs is essential, not only to address inadvertent statutory shortfalls and elevate the profile of state veterans' affairs, but also to better integrate benefit claims with human services programs so that eligible veterans and family members receive the federal compensation, benefits, and care that they have earned in self-sacrificing service in the armed forces of the United States of America.

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

**Section 1.** Section 2-15-1205, MCA, is amended to read:

**"2-15-1205. Board of veterans' affairs — composition — quorum — voting — compensation — allocation.** (1) There is a board of veterans' affairs.

(2) (a) The board consists of ~~five~~ 20 members. All members must be residents of this state. Eleven members are voting members, who must be confirmed by the senate, and nine members are nonvoting, *ex officio* members.

(b) The governor shall appoint 19 members ~~appointed by the governor with the consent of the senate. Not more than one member shall be appointed from a single county. However, a change of residence within the state after appointment does not alter a member's status. in a manner that provides for staggered terms. The members are:~~

(i) ~~All~~ five regional representatives, who must be voting members and who ~~members shall be residents of this state and shall~~ have been honorably discharged from service in the military forces of the United States ~~in any of its wars~~. Each must be appointed to represent a different geographic region of the state and must be a resident of that geographic region. The board shall establish the geographic regions by rule. A member who represents a geographic region and who changes residence to a different geographic region may no longer serve on the board unless appointed as a representative for the new location or as a representative meeting other criteria.

(ii) one honorably discharged veteran, who must be a voting member and serve as a representative of veterans at large;

(iii) one tribal member who must be an honorably discharged veteran and who is a voting member;

(iv) three members who must have training, education, or experience related to veterans' issues, including but not limited to health and medical care, mental health care, chemical or drug dependency, homelessness, or job training and placement. These three members are voting members.

(v) a representative of the office of state coordinator of Indian affairs, who is a nonvoting member;

(vi) a representative from the department of public health and human services, who is a nonvoting member;

(vii) a representative of the United States department of veterans affairs, who is a nonvoting member;

(viii) a representative of the veterans' employment and training service office in the United States department of labor, who is a nonvoting member;

(ix) a representative of the state administration and veterans' affairs interim committee, who is a nonvoting member;

(x) three members, one representing each house and senate member of Montana's congressional delegation, who are nonvoting members; and

(xi) the director of the department of military affairs, who is a nonvoting member.

(c) The tribal leaders of the eight tribal councils in Montana may appoint one voting member who is affiliated with a Montana tribe and is an honorably discharged veteran. If a tribal member is not appointed by the Montana tribal leaders, the governor shall choose this member by lot from a pool of names submitted by the eight tribal councils in the state, with each tribal council submitting one name.

(3) A vacancy occurring on the board shall must be filled by the governor, subject to the conditions of this subsection (2).

(4) A quorum is six voting members.

(5) A vote resulting in a tie is the same as a negative vote.

~~(3)~~(6) Each voting member shall must receive compensation meals, lodging, and travel expenses as provided for in ~~37-1-133~~ 2-18-501 through 2-18-503. Compensation for the legislator who represents the state administration and veterans' affairs interim committee must be paid from the board of veterans' affairs budget.

(7) The board shall meet at least four times a year. Special meetings may be called by the administrator or by a majority of voting members. Meetings may be held at different locations around the state to give local veterans an opportunity to attend. Advance notice of meetings must be provided to all veterans' groups and to any individual who requests notification.

~~(4)~~(8) Each voting member shall may serve for a maximum of two terms. Each term ~~of 5~~ is for 4 years.

~~(5)~~(9) A member may be removed by the governor only for incompetence, malfeasance, or neglect of duty.

(10) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply including an administrator. The administrator shall serve as the secretary of the board and may represent the board in communications with the governor and with other state agencies, notwithstanding the provisions of 2-15-121(3)(a)."

**Section 2.** Section 10-2-102, MCA, is amended to read:

**"10-2-102. Duty Duties of board — employee qualifications.** (1) The board shall establish a statewide service for discharged veterans and their families, as provided in this section. The board shall:

(a) actively cooperate with local, state, and federal agencies having to do with whose services encompass the affairs of veterans and their families, and;

(b) promote the general welfare of all veterans and their families;

(c) assist veterans and their families who are residents of this state in filing claims for the benefits to which they are entitled. In carrying out this duty, the board and its accredited employees shall, upon the request of an eligible claimant, act as agents for the claimant in developing and presenting claims for

benefits provided under Title 38 of the United States Code. The board shall seek to secure speedy and just action for each claimant. A board employee officially acting as an agent on behalf of a claimant must be properly accredited and recognized pursuant to 38 CFR 14.628 and 14.629.

(d) officially advocate for the fair treatment of Montana's veterans and their families by the U.S. department of veterans affairs with respect to claims processing, health care services, and other veteran-related programs and inform veterans and their family members of all available grievance procedures;

(e) develop and implement an information and communication program to keep veterans and their family members informed about available federal, state, and community-based services and benefits. The program may include but is not limited to:

(i) development and distribution of a services and benefits directory;

(ii) regular public service announcements through various media;

(iii) an internet website with information and links relevant to veterans and their families and including information about board meetings and activities related to veterans' affairs; and

(iv) a quarterly newsletter, which may be printed or electronically distributed by e-mail or by posting it to an appropriate website.

(f) seek grants to help fund veterans' programs established pursuant to this section;

(g) develop a memorandum of understanding with the federal veterans' employment and training service and with other appropriate entities to facilitate interagency cooperation, such as resource sharing, cross-training, data and information sharing, and service delivery coordination;

(h) establish management tools, including but not limited to needs assessments, policy statements, program goals and objectives, performance measures, and program evaluation criteria;

(i) prepare a biennial report to the governor, the department of military affairs, the appropriate legislative interim committee, and veterans' service organizations. The report must include but is not limited to the latest information about the demographics of Montana's veteran population, a needs assessment, annual summaries of the veterans' special revenue accounts established in [section 3] and 10-2-603, and a review of the veterans' affairs budget.

(j) request legislation responsive to identified needs.

(2) Employees of the board must be residents of this state. Whenever possible, all employees of the board must have served in the military forces of the United States during World War I, World War II, the Korean war, ~~or~~ the Vietnam conflict, or other period of conflict involving the United States military overseas and must have been honorably discharged. Preference for employment must be given to disabled veterans.

(3) The board shall hire an administrator to implement board policy and carry out the duties of the board."

**Section 3. Veterans' services special revenue account — sources of funds — designated uses.** (1) There is a veterans' services account in the state special revenue fund, established pursuant to 17-2-102(1)(b), to the credit of the board.



(2) Money transferred pursuant to 15-1-122(3)(g) from license plate sales as described in [section 5], and from gifts, grants, or donations must be deposited in the veterans' services account.

(3) Legislative appropriations of money in the veterans' services account must be used for the purposes identified in 10-2-102 or other functions authorized by the board.

(4) There is a veterans' services federal account in the federal special revenue fund established for federal funds received under 10-2-106.

**Section 4. Rulemaking authority.** The board shall adopt rules in accordance with the Montana Administrative Procedure Act provided for in Title 2, chapter 4, to implement the provisions of this part.

**Section 5. Patriotic license plates — surcharge — disposition.** (1) Subject to 61-3-472 through 61-3-481 and this section, the board may sponsor a generic specialty license plate designed as a patriotic salute to Montana's military veterans.

(2) A Montana resident may purchase patriotic plates for a \$15 surcharge to be paid for each original set of plates and each renewal. The surcharge is in addition to the one-time administrative fee charged pursuant to 61-3-480(1).

(3) The surcharge collected pursuant to this section must be remitted as provided in 61-3-480 and deposited to the veterans' services account established in [section 3(1)].

**Section 6. County veterans' service officers.** A county may, with the advice of the board, provide for a county veterans' service officer to assist veterans and their families in filing benefit claims. If a county provides for a veterans' service officer under this section, the officer must be trained, accredited, and supervised in accordance with the applicable provisions of 38 CFR 14.629. A county may fund the position as provided for in 15-10-425 or through other means provided by law.

**Section 7.** Section 10-2-106, MCA, is amended to read:

**"10-2-106. Acceptance of federal funds or other funds.** (1) The board may accept from the federal government or any of its agencies ~~thereof~~ any funds made available to carry out ~~purposes within the scope of~~ the activities and purposes of the board ~~as identified in 10-2-102 and accept such funds as the board directs.~~ Federal funds must be deposited in the veterans' services federal account established in [section 3(4)].

(2) *The board may accept gifts, grants, or donations from other public or private sources, which must be used within the scope of activities and purposes identified in 10-2-102 or as otherwise authorized by the board.*

(3) *Gifts, grants, or donations must be deposited in the veterans' services account established in [section 3(1)] unless specifically assigned by the donor to the special revenue account for state veterans' cemeteries established in 10-2-603."*

**Section 8.** Section 10-2-601, MCA, is amended to read:

**"10-2-601. State veterans' cemeteries.** ~~The department of military affairs~~ board shall establish and operate state veterans' cemeteries. A cemetery must be located at Fort William Henry Harrison, Lewis and Clark County, Montana, and at Miles City. *The board may establish additional state veterans' cemeteries as funding appropriated pursuant to 10-2-603 allows."*

**Section 9.** Section 10-2-602, MCA, is amended to read:

**“10-2-602. Rulemaking authority.** ~~The department of military affairs board shall adopt rules that to administer the state veterans’ cemetery program and to provide criteria for determining which veterans whomay be buried in a state veterans’ cemetery. The criteria must include but are not limited to discharge status and length of service. The rules must be adopted in accordance with the Montana Administrative Procedure Act provided for in Title 2, chapter 4.”~~

**Section 10.** Section 10-2-603, MCA, is amended to read:

**“10-2-603. Special revenue account — use of funds — solicitation.** (1) There is an account in the special revenue fund to the credit of the ~~department of military affairs board~~ for the state veterans’ cemeteries.

(2) Plot allowances, ~~and donations to the cemetery program, and fund transfers pursuant to 15-1-122(3)(d)~~ must be deposited into the account.

(3) As appropriated by the legislature, money in the account may be used only for the construction, maintenance, operation, and administration of the state veterans’ cemeteries.

(4) ~~The department of military affairs may board shall solicit veterans’ license plate sales and donations on behalf of the state veterans’ cemeteries.”~~

**Section 11. Income tax deduction for contribution to veterans’ programs.** (1) A taxpayer who itemizes deductions in filing an individual or a joint income tax return may, in computing net income, claim a deduction for donations to the veterans’ services account established in [section 3(1)], the state veterans’ cemetery program pursuant to 10-2-603, or any surcharge paid pursuant to [section 5] unless the amount is included as a deduction under 15-30-121(1)(a).

(2) A taxpayer may enclose a separate check or other payment to contribute to the veterans’ special revenue accounts, established in [section 3(1)] and 10-2-603 and count that deduction from taxes for the year in which the donation was made.

(3) The department shall provide a form to identify the deduction, and the contribution must be attached to the form.

(4) All money received pursuant to subsection (1) must be forwarded upon receipt by the department to the state treasurer for deposit in the veterans’ services account established in [section 3(1)] or to the special revenue account established in 10-2-603. If the taxpayer does not specify to which fund the contribution is intended to go, the department shall deposit the money in the veterans’ services account established in [section 3(1)]. The department may not make deductions for administrative expenses in handling these donations.

**Section 12.** Section 15-1-122, MCA, is amended to read:

**“15-1-122. Fund transfers.** (1) There is transferred from the state general fund to the adoption services account, provided for in 42-2-105, \$36,764 for fiscal year 2003. Beginning with fiscal year 2004, the amount of the transfer must be increased by 10% in each succeeding fiscal year.

(2) There is transferred from the state general fund to the department of transportation state special revenue nonrestricted account the following amounts:

(a) \$75,000 in fiscal year 2003;

(b) \$2,960,715 in fiscal year 2004; and

(c) in each succeeding fiscal year, the amount in subsection (2)(b), increased by 1.5% in each succeeding fiscal year.

(3) For fiscal year 2002 and for each succeeding fiscal year, there is transferred from the state general fund to the accounts, entities, or recipients indicated the following amounts:

(a) to the motor vehicle recycling and disposal program provided for in Title 75, chapter 10, part 5:

(i) \$2 for each new application for a motor vehicle title and for each transfer of a motor vehicle title for which a fee is paid pursuant to 61-3-203; and

(ii) \$1 for each passenger car or truck under 8,001 pounds GVW registered for licensing pursuant to Title 61, chapter 3, part 3. Fifteen cents of each dollar must be used for the purpose of reimbursing the hired removal of abandoned vehicles during the calendar year following the calendar year in which the fee was paid. Any portion of the 15 cents not used for abandoned vehicle removal reimbursement during the calendar year following its payment must be used as provided in 75-10-532;

(b) to the noxious weed state special revenue account provided for in 80-7-816:

(i) \$1 for each off-highway vehicle subject to payment of the fee in lieu of tax, as provided for in 23-2-803; and

(ii) \$1.50 for each light vehicle, truck or bus weighing less than 1 ton, logging truck, vehicles weighing more than 1 ton, motorcycle, quadricycle, and motor home subject to registration or reregistration pursuant to 61-3-321;

(c) to the department of fish, wildlife, and parks:

(i) \$2.50 for each motorboat, sailboat, or personal watercraft receiving a certificate of number under 23-2-512, with 20% of the amount received to be used to acquire and maintain pumpout equipment and other boat facilities;

(ii) \$5 for each snowmobile registered under 23-2-616, with \$2.50 to be used for enforcing the purposes of 23-2-601 through 23-2-644 and \$2.50 designated for use in the development, maintenance, and operation of snowmobile facilities;

(iii) \$1 for each duplicate snowmobile decal issued under 23-2-617;

(iv) \$5 for each off-highway vehicle decal issued under 23-2-804 and each off-highway vehicle duplicate decal issued under 23-2-809, with 40% of the money used to enforce the provisions of 23-2-804 and 60% of the money used to develop and implement a comprehensive program and to plan appropriate off-highway vehicle recreational use;

(v) to the state special revenue fund established in 23-1-105, \$3.50 for each recreational vehicle, camper, motor home, and travel trailer registered or reregistered and subject to the fee in 61-3-321 or 61-3-524; and

(vi) an amount equal to 20% of the funds collected pursuant to 23-2-518 to be deposited in the motorboat account to be used as provided in 23-2-533;

(d) to the state veterans' cemetery account, provided for in 10-2-603, \$10 for each veteran's license plate issued pursuant to 61-3-332(10)(a)(ii), (10)(f), and (10)(h);

(e) to the supplemental benefits for highway patrol officers' retirement account provided for in 19-6-709, 25 cents for each motor vehicle registered,

other than trailers or semitrailers registered in other jurisdictions and registered through a proportional registration agreement; and

(f) 25 cents a year for each vehicle subject to the fee in 61-3-321(6) for deposit in the state special revenue fund to the credit of the senior citizens and persons with disabilities transportation services account provided for in 7-14-112.

(g) 50 cents a year for each vehicle subject to the fee in 61-3-321(7) for deposit in the state special revenue fund to the credit of the veterans' services account provided for in [section 3(1)].

(4) For fiscal year 2002, there is transferred from the state general fund to the state special revenue fund to be used for purposes of state funding of district court expenses, as provided in 3-5-901, \$5,742,983 in lieu of the amount deposited by the state treasurer under 61-3-509(3), as that subsection read prior to the amendment of 61-3-509 in 2001.

(5) For each fiscal year, beginning with fiscal year 2002, the department of justice shall provide to the department of revenue a count of the vehicles required for the calculations in subsection (3). Transfer amounts for fiscal year 2002 must be based on vehicle counts for calendar year 2000. Transfer amounts in each succeeding fiscal year must be based on vehicle counts in the most recent calendar year for which vehicle information is available.

(6) The amounts transferred from the general fund to the designated recipient must be appropriated as state special revenue in the general appropriations act for the designated purposes."

**Section 13.** Section 61-3-321, MCA, is amended to read:

**"61-3-321. Registration fees of vehicles — certain vehicles exempt from license or registration fees — disposition of fees.** (1) Registration or license fees must be paid upon registration or reregistration of motor vehicles, trailers, and semitrailers, in accordance with this chapter, as follows:

- (a) light vehicles under 2,850 pounds, \$13.75;
- (b) trailers with a declared weight of less than 2,500 pounds and semitrailers, \$8.25;
- (c) motor vehicles registered pursuant to 61-3-411 that are:
  - (i) over 2,850 pounds, \$10; and
  - (ii) under 2,850 pounds, \$5;
- (d) off-highway vehicles registered pursuant to 23-2-817, \$9;
- (e) light vehicles over 2,850 pounds, trucks and buses less than 1 ton, and heavy trucks in excess of 1 ton, \$18.75;
- (f) logging trucks less than 1 ton, \$23.75;
- (g) motor homes, \$22.25;
- (h) motorcycles and quadricycles, \$9.75;
- (i) trailers and semitrailers between 2,500 and 6,000 pounds, \$11.25;
- (j) trailers and semitrailers in excess of 6,000 pounds, other than trailers and semitrailers registered in other jurisdictions and registered through a proportional registration agreement, \$16.25;
- (k) travel trailers, \$11.75; and
- (l) recreational vehicles, \$3.50.

(2) If a motor vehicle, trailer, or semitrailer is originally registered 6 months after the time of registration as set by law, the registration or license fee for the remainder of the year is one-half of the regular fee.

(3) An additional fee of \$5 must be collected for the registration of each motorcycle as a safety fee and must be deposited in the state motorcycle safety account provided for in 20-25-1002.

(4) A fee of \$2 for each set of new number plates must be collected when number plates provided for under 61-3-332(2) are issued.

(5) 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, 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.

(6) (a) Except as provided in 61-3-562 and subsection (6)(b) of this section, a fee of 25 cents a year for each registration of a vehicle must be collected when a vehicle is registered or reregistered. The revenue derived from this fee must be forwarded by the county treasurer for deposit in the general fund for transfer to the credit of the senior citizens and persons with disabilities transportation services account provided for in 7-14-112.

(b) The following vehicles are not subject to the fee imposed in subsection (6)(a):

(i) trailers and semitrailers registered in other jurisdictions and registered through a proportional registration agreement; and

(ii) travel trailers, recreational vehicles, and off-highway vehicles registered pursuant to 23-2-817.

*(7) (a) Except as provided in 61-3-562 and subsection (7)(b) of this section, a fee of 50 cents a year for each registration of a vehicle must be collected when a vehicle is registered or reregistered. The county treasurer shall forward revenue derived from this fee to the state for deposit in the general fund.*

*(b) The following vehicles are not subject to the fee:*

*(i) trailers and semitrailers registered in other jurisdictions and registered through a proportional registration agreement;*

*(ii) off-highway vehicles registered pursuant to 23-2-817; and*

*(iii) vehicles bearing license plates described in 61-3-332(10)(d).*

~~(7)(8)~~ The provisions of this section relating to the payment of registration fees or new number plate fees do not apply when number plates are transferred to a replacement vehicle under 61-3-317, 61-3-332, or 61-3-335.

~~(8)(9)~~ A person qualifying under 61-3-332(10)(d) is exempt from the fees required under this section.

~~(9)(10)~~ Except as otherwise provided in this section, revenue collected under this section must be deposited in the state general fund."

**Section 14. Implementation.** (1) The members of the board of veterans' affairs, established in 2-15-1205, who are members on the day before [the effective date of this act] may continue to serve the remainder of their terms as described under the provisions of 2-15-1205.

(2) Appointments to the board made after [the effective date of this act] must be made as described in 2-15-1205(2).

**Section 15. 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 band of Chippewa.

**Section 16. Codification instruction.** (1) [Sections 3 through 6] are intended to be codified as an integral part of Title 10, chapter 2, part 1, and the provisions of Title 10, chapter 2, part 1, apply to [sections 3 through 6].

(2) [Section 11] is intended to be codified as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to [section 11].

**Section 17. Effective date.** [This act] is effective January 1, 2004.

Approved April 24, 2003

## CHAPTER NO. 492

[SB 441]

AN ACT AUTHORIZING THE TRUSTEES OF A SCHOOL DISTRICT TO ISSUE IMPACT AID REVENUE BONDS; DEFINING "FEDERAL IMPACT AID BASIC SUPPORT PAYMENT", "GENERAL OBLIGATION BONDS", AND "IMPACT AID REVENUE BONDS"; PLACING A LIMIT ON THE MAXIMUM AMOUNT OF IMPACT AID BONDS THAT A SCHOOL DISTRICT MAY ISSUE; PROVIDING SECURITY FOR IMPACT AID RESERVE BONDS; REQUIRING TRUSTEES TO SPECIFY IN A RESOLUTION, AN ELECTION PETITION, AND ON THE BOND ELECTION BALLOT WHETHER BONDS WILL BE GENERAL OBLIGATION OR IMPACT AID REVENUE BONDS; PROVIDING THAT IMPACT AID REVENUE BONDS MUST BE PAID SOLELY FROM FEDERAL IMPACT BASIC SUPPORT PAYMENTS RECEIVED AND DO NOT PLEDGE THE FULL FAITH AND CREDIT AND TAXING AUTHORITY OF THE SCHOOL DISTRICT; PROVIDING THAT THE TRUSTEES PROVIDE A COUNTY TREASURER WITH AN IMPACT AID REVENUE BOND DEBT SERVICE SCHEDULE AND A SEPARATE IMPACT AID REVENUE BOND DEBT SERVICE FUND AND AUTHORIZING ESTABLISHMENT OF AN IMPACT AID REVENUE BOND DEBT SERVICE RESERVE ACCOUNT; PROVIDING THAT THE GUARANTEED TAX BASE IS LIMITED TO GENERAL OBLIGATION BONDS; AMENDING SECTIONS 20-9-371, 20-9-403, 20-9-406, 20-9-408, 20-9-422, 20-9-423, 20-9-426, 20-9-427, 20-9-430, 20-9-433, 20-9-437, 20-9-438, 20-9-439, AND 20-9-440, 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 20-9-371, MCA, is amended to read:

**"20-9-371. Calculation and uses of school facility entitlement amount.** (1) The state reimbursement for school facilities for a district is the percentage determined in 20-9-346(2)(b) times (1-(district mill value per ANB/statewide mill value per ANB)) times the lesser of the total school facility entitlement calculated under the provisions of 20-9-370 or the district's current year debt service obligations on *general obligation* bonds that qualify under the provisions of 20-9-370(3).

(2) The state advance for school facilities for a district is determined as follows:

(a) Calculate the percentage of the district's debt service payment that will be advanced by the state using the district ANB, the district mill value and the statewide mill value for the current year, and the percentage used to determine the proportionate share of state reimbursement for school facilities in the prior year.

(b) Multiply the percentage determined in subsection (2)(a) by the lesser of the total school facility entitlement calculated under the provisions of 20-9-370 or the district's current year debt service obligation for *general obligation* bonds to which the state advance applies.

(3) Within the available appropriation, the superintendent of public instruction shall first distribute to eligible districts the state advance for school facilities. From the remaining appropriation, the superintendent shall distribute to eligible districts the state reimbursement for school facilities.

(4) The trustees of a district may apply the state reimbursement for school facilities to reduce the levy requirement in the ensuing school fiscal year for all outstanding bonded indebtedness on *general obligation* bonds sold in the debt service fund of the district after July 1, 1991. The trustees may apply the state advance for school facilities to reduce the levy requirement in the current school fiscal year for debt service payments on *general obligation* bonds to which the state advance for school facilities applies."

**Section 2.** Section 20-9-403, MCA, is amended to read:

**"20-9-403. Bond issues for certain purposes.** (1) The trustees of a school district may issue and negotiate *general obligation bonds or impact aid bonds* ~~on the credit~~ of the school district for the purpose of:

(a) building, altering, repairing, buying, furnishing, equipping, purchasing lands for, ~~and/or~~ or obtaining a water supply for a school, teacherage, dormitory, gymnasium, other building, or combination of ~~said~~ buildings for school purposes;

(b) buying a school bus or buses;

(c) providing the necessary money to redeem matured bonds, maturing bonds, or coupons appurtenant to bonds when there is not sufficient money to redeem them;

(d) providing the necessary money to redeem optional or redeemable bonds when it is for the best interest of the school district to issue refunding bonds; ~~or~~

(e) funding a judgment against the district, including the repayment of tax protests lost by the district; *or*

(f) *funding a debt service reserve account that may be required for impact aid revenue bonds.*

(2) ~~Any money~~ Money realized from the sale of ~~any~~ bonds issued on the credit of a high school district ~~shall~~ may not be used for any of the ~~above~~ purposes listed in subsection (1) in an elementary school district, and ~~such~~ the money may be used for any of the ~~above~~ purposes listed in subsection (1) for a junior high school but only to the extent that the 9th grade of the high school is served ~~thereby.~~"

**Section 3.** Section 20-9-406, MCA, is amended to read:

**"20-9-406. Limitations on amount of bond issue — definition of federal impact aid basic support payment.** (1) (a) Except as provided in subsection (1)(d), the maximum amount for which an elementary district or a high school district may become indebted by the issuance of *general obligation*

bonds, including all indebtedness represented by outstanding *general obligation* bonds of previous issues and registered warrants, is 45% of the taxable value of the property subject to taxation, as ascertained by the last assessment for state, county, and school taxes previous to the incurring of the indebtedness.

(b) Except as provided in subsection (1)(d), the maximum amount for which a K-12 school district, as formed pursuant to 20-6-701, may become indebted by the issuance of *general obligation* bonds, including all indebtedness represented by outstanding *general obligation* bonds of previous issues and registered warrants, is up to 90% of the taxable value of the property subject to taxation, as ascertained by the last assessment for state, county, and school taxes previous to the incurring of the indebtedness.

(c) The total indebtedness of the high school district with an attached elementary district is limited to the sum of 45% of the taxable value of the property for elementary school program purposes and 45% of the taxable value of the property for high school program purposes.

(d) (i) The maximum amount for which an elementary district or a high school district with a district mill value per elementary ANB or per high school ANB that is less than the corresponding statewide mill value per elementary ANB or per high school ANB may become indebted by the issuance of *general obligation* bonds, including all indebtedness represented by outstanding *general obligation* bonds of previous issues and registered warrants, is 45% of the corresponding statewide mill value per ANB times 1,000 times the ANB of the district. For a K-12 district, the maximum amount for which the district may become indebted is 45% of the sum of the statewide mill value per elementary ANB times 1,000 times the elementary ANB of the district and the statewide mill value per high school ANB times 1,000 times the high school ANB of the district.

(ii) If mutually agreed upon by the affected districts, for the purpose of calculating its maximum bonded indebtedness under this subsection (1)(d), a district may include the ANB of the district plus the number of students residing within the district for which the district or county pays tuition for attendance at a school in an adjacent district. The receiving district may not use out-of-district ANB for the purpose of calculating its maximum indebtedness if the out-of-district ANB has been included in the ANB of the sending district pursuant to the mutual agreement.

(2) The maximum amounts determined in subsection (1), ~~however, may do~~ not pertain to indebtedness imposed by special improvement district obligations or assessments against the school district or to *general obligation* bonds issued for the repayment of tax protests lost by the district. All *general obligation* bonds issued in excess of the amount are void, except as provided in this section.

(3) *The maximum amount of impact aid revenue bonds that an elementary district, high school district, or K-12 school district may issue may not exceed a total aggregate amount equal to three times the average of the school district's annual federal impact aid basic support payments for the 5 years immediately preceding the issuance of the bonds. However, at the time of issuance of the bonds, the average annual payment of principal and interest on the impact aid bonds each year may not exceed 35% of the total federal impact aid basic support payments of the school district for the current year.*

~~(3)~~(4) When the total indebtedness of a school district has reached the limitations prescribed in this section, the school district may pay all reasonable



and necessary expenses of the school district on a cash basis in accordance with the financial administration provisions of this chapter.

~~(4)~~(5) Whenever bonds are issued for the purpose of refunding bonds, any money to the credit of the debt service fund for the payment of the bonds to be refunded is applied toward the payment of the bonds and the refunding bond issue is decreased accordingly.

(6) As used in this part, "federal impact aid basic support payment" means the annual impact aid revenue received by a district under 20 U.S.C. 7703(b), but excludes revenue received for impact aid special education under 20 U.S.C. 7703(d) and impact aid construction under 20 U.S.C. 7707."

**Section 4.** Section 20-9-408, MCA, is amended to read:

**"20-9-408. Definition of forms of bonds.** As used in this part:

(1) "amortization bond" means that form of bond on which a part of the principal is required to be paid each time that interest becomes due and payable. The part payment of principal increases with each following installment in the same amount that the interest payment decreases, so that the combined amount payable on principal and interest is the same on each payment date. However, the payment on the initial interest payment date may be less or greater than the amount of other payments on the bond, reflecting the payment of interest only or the payment of interest for a period different from that between other interest payment dates. The final payment may vary from prior payments in amount as a result of rounding prior payments.

(2) "general obligation bonds" means bonds that pledge the full faith and credit and the taxing power of a school district;

(3) "impact aid revenue bonds" means bonds that pledge and are payable solely from federal impact aid basic support payments received and deposited to the credit of the account established in 20-9-514; and

~~(2)~~(4) "serial bonds" means a bond issue payable in annual installments commencing not more than 2 years from the date of issue, any one installment consisting of one or more bonds, with the principal amount of bonds maturing in each installment not exceeding three times the principal amount of the bonds maturing in the immediately preceding installment."

**Section 5.** Section 20-9-422, MCA, is amended to read:

**"20-9-422. Additional requirements for trustees' resolution calling bond election.** (1) In addition to the requirements for calling an election that are prescribed in 20-20-201 and 20-20-203, the trustees' resolution calling a school district bond election must:

(a) specify whether the bonds will be general obligation bonds or impact aid revenue bonds;

~~(a)~~(b) fix the exact amount of the bonds proposed to be issued, which may be more or less than the amounts estimated in a petition;

~~(b)~~(c) fix the maximum number of years in which the proposed bonds would be paid;

~~(c)~~(d) in the case of initiation by a petition, state the essential facts about the petition and its presentation; and

~~(d)~~(e) state the amount of the state advance for school facilities estimated, pursuant to subsection (2), to be received by the district in the first school fiscal year in which a debt service payment would be due on the proposed bonds.

(2) Prior to the adoption of the resolution calling for a school bond election for a *general obligation bond*, the trustees of a district may request from the superintendent of public instruction a statement of the estimated amount of state advance for school facilities that the district will receive for debt service payments on the proposed *general obligation* bonds in the first school fiscal year in which a debt service payment is due. The district shall provide the superintendent with an estimate of the debt service payment due in the first school fiscal year. The superintendent shall estimate the state advance for the *general obligation* bond issue pursuant to 20-9-371(2)."

**Section 6.** Section 20-9-423, MCA, is amended to read:

**"20-9-423. Form, contents, and circularization of petition proposing school district bond election.** Any petition for the calling of an election on the proposition of issuing school district bonds ~~shall~~ *must*:

(1) *specify whether the bonds will be general obligation bonds or impact aid revenue bonds;*

~~(1)~~(2) *plainly state each purpose of the proposed bond issue and the estimated amount of the bonds that would be issued for each purpose;*

~~(2)~~(3) *be signed by not less than 20% of the school district electors qualified to vote under the provisions of 20-20-301 in order to constitute a valid petition;*

~~(3)~~(4) *be a single petition or it may be composed of more than one petition, all being identical in form, and after being circulated and signed, they ~~shall~~ *must* be fastened together to form a single petition when submitted to the county registrar;*

~~(4)~~(5) *be circulated by any one or more qualified electors of the school district; and*

~~(5)~~(6) *contain an affidavit of each registered elector circulating a petition attached to the portion of the petition he circulated. ~~Such~~ *The* affidavit ~~shall~~ *must* attest to the authenticity of the signatures and that the signers knew the contents of the petition at the time of signing it."*

**Section 7.** Section 20-9-426, MCA, is amended to read:

**"20-9-426. Preparation and form of ballots for bond election.** (1) The school district shall cause ballots to be prepared for all bond elections, and whenever bonds for more than one purpose are to be voted upon at the same election, separate ballots must be prepared for each purpose.

(2) For bond elections that are not held in conjunction with a school election, the ballots for absentee voting must be printed and made available at least 30 days before the bond election.

(3) All ballots must be substantially in the following form:

OFFICIAL BALLOT SCHOOL DISTRICT BOND ELECTION

INSTRUCTIONS TO VOTERS: Make an X or similar mark in the vacant square before the words "BONDS—YES" if you wish to vote for the bond issue; if you are opposed to the bond issue, make an X or similar mark in the square before the words "BONDS—NO".

Shall the board of trustees be authorized to issue and sell (*state type of bonds here: general obligation or impact aid revenue*) bonds of this school district in the amount of.... dollars (\$....), bearing interest at a rate not more than.... percent (....%) a year, payable semiannually, during a period not more than....

years, for the purpose.... (here state the purpose the same way as in the notice of election)?

- BONDS — YES.
- BONDS — NO.”

**Section 8.** Section 20-9-427, MCA, is amended to read:

**“20-9-427. Notice of bond election by separate purpose.** (1) A school district bond election must be conducted in accordance with the school election provisions of this title, except that the election notice must be in substantially the following form:

NOTICE OF SCHOOL DISTRICT BOND ELECTION

Notice is hereby given by the trustees of School District No..... of.... County, state of Montana, that pursuant to a certain resolution adopted at a meeting of the board of trustees of the school district held on the.... day of...., ....., an election of the registered electors of School District No..... of.... County, state of Montana, will be held on the.... day of...., ....., at.... for the purpose of voting upon the question of whether or not the trustees may issue and sell (*state here: general obligation or impact aid revenue*) bonds of the school district in the amount of.... dollars (\$....), bearing interest at a rate not more than.... percent (...%) a year, payable semiannually, for the purpose of.... (here state purpose). The bonds to be issued will be payable in installments over a period not exceeding.... (state number) years.

The polls will be open from.... o'clock....m. and until.... o'clock....m. of the election day.

Dated and posted this.... day of.....

.....  
 Presiding officer, School District No.....  
 of..... County  
 Address.....

(2) If the bonds proposed to be issued are for more than one purpose, then each purpose must be separately stated in the notice, together with the proposed amount of bonds for each purpose.

(3) *The notice must specify whether the bonds will be general obligation bonds or impact aid revenue bonds.*”

**Section 9.** Section 20-9-430, MCA, is amended to read:

**“20-9-430. Notice of sale of school district bonds.** The trustees shall give notice of the sale of school district bonds. The notice must state the purpose for which the bonds are to be issued and the amount proposed to be issued and must be substantially in the following form:

NOTICE OF SALE OF SCHOOL DISTRICT BONDS

Notice is hereby given by the trustees of School District No..... of.... County, state of Montana, that the trustees will on the.... day of...., ....., at the hour of.... o'clock....m. at...., in the school district, sell to the highest and best bidder for cash (*state here: general obligation or impact aid revenue*) bonds of the school district in the total amount of.... dollars (\$....), for the purpose of....

The bonds will be issued and sold in the aggregate principal amount of.... dollars (\$....) each and will become payable according to the maturity schedule

set forth below (set forth maturity schedule adopted by the school district). (If the bonds are to be issued as amortization bonds, indicate that here.)

The bonds will bear an original issue date of...., ....., will pay interest commencing on the.... day of... (month), ....., will be payable semiannually on the.... day of... (month) and.... (month) in each year thereafter, and will be redeemable in full. (Here insert optional provisions, if any, to be recited on the bonds.)

The bonds will be sold for not less than \$...., with accrued interest on the principal amount of the bonds to the date of their delivery, and all bidders shall state the lowest rate of interest at which they will purchase the bonds at the price specified for the bonds. The trustees reserve the right to reject any bids and to sell the bonds at private sale.

All bids must be accompanied by (insert appropriate bid security as permitted by 18-1-202) in the sum of... dollars (\$....) payable to the order of the district, which will be forfeited by the successful bidder in the event that the bidder refuses to purchase the bonds.

All bids should be addressed to the undersigned district.

.....  
Presiding officer, School District No.....  
of..... County  
Address:.....

ATTEST:

Subscribed and sworn to before me this.... day of....., ....., ..... Notary Public for the State residing at...., Montana. My commission expires.....”

**Section 10.** Section 20-9-433, MCA, is amended to read:

**“20-9-433. Form and execution of school district bonds.** (1) At the time of the sale of the bonds or at a meeting held after the sale, the trustees shall adopt a resolution *or indenture of trust* providing for the issuance of the bonds, prescribing the form of the bonds, whether amortization or serial bonds, and prescribing the manner of execution of the bonds.

(2) Each bond and coupon attached to a bond must be signed by or bear the facsimile signatures of the presiding officer of the trustees and the school district clerk, provided that one signature of a school official or the bond registrar must be a manual signature.”

**Section 11.** Section 20-9-437, MCA, is amended to read:

**“20-9-437. School district liable on bonds.** (1) The full faith, credit, and taxable resources of a school district issuing *general obligation* bonds under the provisions of this title are pledged for the repayment of the bonds with interest according to the terms of the bonds. For the purpose of making the provisions of this part enforceable, each school district is a body corporate that may sue and be sued by or in the name of the trustees of the school district.

(2) A school district may use up to 25% of its federal impact aid funds received pursuant to 20-9-514 for repayment of *general obligation* bonds.

(3) *Impact aid revenue bonds must be payable solely from the federal impact aid basic support payment received by the school district and deposited to the credit of the impact aid fund established in 20-9-514 and do not constitute a*

*general obligation of the school district. The school district's taxing power is not pledged for the repayment of impact aid revenue bonds."*

**Section 12.** Section 20-9-438, MCA, is amended to read:

**"20-9-438. Preparation of general obligation debt service fund budget — operating reserve.** (1) The trustees of each school district having outstanding *general obligation* bonds shall include in the debt service fund of the final budget adopted in accordance with 20-9-133 an amount of money that is necessary to pay the interest and the principal amount becoming due during the ensuing school fiscal year for each series or installment of bonds, according to the terms and conditions of the bonds and the redemption plans of the trustees.

(2) The trustees shall also include in the debt service fund of the final budget:

(a) the amount of money necessary to pay the special improvement district assessments levied against the school district that become due during the ensuing school fiscal year; and

(b) a limited operating reserve for the school fiscal year following the ensuing school fiscal year as provided in subsection (3).

(3) At the end of each school fiscal year, the trustees of a school district may designate a portion of the end-of-the-year fund balance of the debt service fund to be earmarked as a limited operating reserve for the purpose of paying, whenever a cash flow shortage occurs, debt service fund warrants and bond obligations that must be paid from July 1 through November 30 of the school fiscal year following the ensuing school fiscal year. Any portion of the debt service fund end-of-the-year fund balance not earmarked for limited operating reserve purposes must be reappropriated to be used for property tax reduction as provided in 20-9-439.

(4) The county superintendent shall compare the final budgeted amount for the debt service fund with the bond retirement and interest requirement and the special improvement district assessments for the school fiscal year just beginning as reported by the county treasurer in the statement supplied under the provisions of 20-9-121. If the county superintendent finds that the requirement stated by the county treasurer is more than the final budget amount, the county superintendent shall increase the budgeted amount for interest or principal in the debt service fund of the final budget. The amount confirmed or revised by the county superintendent is the final budget expenditure amount for the debt service fund of the school district."

**Section 13.** Section 20-9-439, MCA, is amended to read:

**"20-9-439. Computation of net levy requirement for general obligation bonds — procedure when levy inadequate.** (1) The county superintendent shall compute the levy requirement for each school district's *general obligation* debt service fund on the basis of the following procedure:

(a) Determine the total money available in the debt service fund for the reduction of the property tax on the district by totaling:

(i) the end-of-the-year fund balance in the debt service fund, less any limited operating reserve as provided in 20-9-438;

(ii) anticipated interest to be earned by the investment of debt service cash in accordance with the provisions of 20-9-213(4) or by the investment of bond proceeds under the provisions of 20-9-435;

(iii) any state advance for school facilities distributed to a qualified district under the provisions of 20-9-346, 20-9-370, and 20-9-371;

(iv) funds transferred from the impact aid fund established pursuant to 20-9-514 that are *authorized by 20-9-437(2) to be used to repay the district's bonds*; and

(v) any other money, including money from federal sources, anticipated by the trustees to be available in the debt service fund during the ensuing school fiscal year from sources such as legally authorized money transfers into the debt service fund or from rental income, excluding any guaranteed tax base aid.

(b) Subtract the total amount available to reduce the property tax, determined in subsection (1)(a), from the final budget for the debt service fund as established in 20-9-438.

(2) The net debt service fund levy requirement determined in subsection (1)(b) must be reported to the county commissioners on the fourth Monday of August by the county superintendent as the net debt service fund levy requirement for the district, and a levy must be made by the county commissioners in accordance with 20-9-142.

(3) If the board of county commissioners fails in any school fiscal year to make a levy for any issue or series of bonds of a school district sufficient to raise the money necessary for payment of interest and principal becoming due during the next ensuing school fiscal year, in any amounts established under the provisions of this section, the holder of any bond of the issue or series or any taxpayer of the district may apply to the district court of the county in which the school district is located for a writ of mandate to compel the board of county commissioners of the county to make a sufficient levy for payment purposes. If, upon the hearing of the application, it appears to the satisfaction of the court that the board of county commissioners of the county has failed to make a levy or has made a levy that is insufficient to raise the amount required to be raised as established in the manner provided in this section, the court shall determine the amount of the deficiency and shall issue a writ of mandate directed to and requiring the board of county commissioners, at the next meeting for the purpose of fixing tax levies for county purposes, to fix and make a levy against all taxable property in the school district that is sufficient to raise the amount of the deficiency. The levy is in addition to any levy required to be made at that time for the ensuing school fiscal year. Any costs that may be allowed or awarded the petitioner in the proceeding must be paid by the members of the board of county commissioners and may not be a charge against the school district or the county."

**Section 14.** Section 20-9-440, MCA, is amended to read:

**"20-9-440. Payment of debt service obligations — termination of interest.** (1) *The school district shall provide the county treasurer with a general obligation bond or impact aid revenue bond debt services schedule. The county treasurer shall maintain a separate debt service fund for each school district and, if bonds are to be issued as impact aid revenue bonds, a separate impact aid revenue bond debt service fund and an impact aid revenue bond debt service reserve account, if required, and shall credit all tax moneys money or impact aid revenue collected for debt service to such the appropriate fund and use the moneys money credited to such the fund for the payment of debt service obligations in accordance with the school financial administration provisions of this title.*

(2) The county treasurer shall pay from the debt service fund all amounts of interest and principal on school district bonds as ~~such~~ the interest or principal becomes due when the coupons or bonds are presented and surrendered for payment and shall pay all special improvement district assessments as ~~the same~~ they become due. If the bonds are held by the state of Montana, then all payments ~~shall~~ must be remitted to the state treasurer who shall cancel the coupons or bonds and return ~~such~~ the coupons or bonds to the county treasurer with ~~his~~ the state treasurer's receipt. If the bonds are not held by the state of Montana and the interest or principal is made payable at some designated bank or financial institution, the county treasurer shall remit the amount due for interest or principal to ~~such~~ the bank or financial institution for payment against the surrender of the canceled coupons or bonds.

(3) Whenever any school district bond or installment on school district bonds ~~shall become~~ becomes due and payable, interest ~~shall cease~~ ceases on ~~such~~ that date unless sufficient funds are available to pay ~~such~~ the bond when it is presented for payment or when payment of an installment is demanded. In either case, interest on ~~such~~ the bond or installment ~~shall continue~~ continues until payment is made.

(4) Any installment on interest and principal on bonds held by the state that is not promptly paid when due ~~shall draw~~ draws interest at an annual rate of 6% from the date due until actual payment, irrespective of the rate of interest on the bonds."

**Section 15. Security for impact aid reserve bonds — agreement of state.** (1) To secure the payment of principal and interest on impact aid revenue bonds, the trustees of a school district by resolution or indenture of trust may provide that impact aid revenue bonds are secured by a first lien on the federal impact aid basic support payments received and credited to the account established in 20-9-514 and pledge to the holders of the impact aid revenue bonds all of the money in the impact aid revenue bond debt service fund.

(2) Upon receipt of the federal impact aid basic support payment, the county treasurer shall deposit in the impact aid revenue bond debt service fund the amount that is required to pay the principal of and interest on the impact aid revenue bonds coming due in the next 12-month period and to restore any deficiency in the impact aid revenue bond debt service reserve account. Excess federal impact aid basic support payment revenue must be deposited as provided in 20-9-514. The school district and county treasurer may designate a trustee for holders of the bonds to receive the school district's impact aid revenue for purposes of making the annual debt service payments on impact aid revenue bonds and may authorize the trustee to establish and maintain the impact aid revenue bond debt service fund and impact aid revenue bond debt service reserve account.

(3) Any pledge made pursuant to this section is valid and binding from the time the pledge is made, and the money pledged and received by the county treasurer on behalf of the school district to be placed in the impact aid revenue bond debt service fund account is immediately subject to the lien of the pledge without any future physical delivery or further act. A lien of any pledge is valid and binding against all parties that have claims of any kind against the school district, regardless of whether the parties have notice of the lien. The bond resolution or indenture of trust that creates the pledge, when adopted by the trustees of any district, is notice of the creation of the pledge, and those

instruments are not required to be recorded in any other place to perfect the pledge.

(4) The state pledges to and agrees with the holders of impact aid revenue bonds that the state will not limit, alter, or impair the ability of a school district to qualify for impact aid revenue or in any way impair the rights and remedies of the bondholders until all bonds issued under this section, together with interest on the bonds, interest on any unpaid installments of principal or interest, and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders, are fully met and discharged. The trustees of any district, as agents for the state, may include this pledge and undertaking in resolutions and indentures authorizing and securing the bonds.

**Section 16. Codification instruction.** [Section 15] is intended to be codified as an integral part of Title 20, chapter 9, part 4, and the provisions of Title 20, chapter 9, part 4, apply to [section 15].

**Section 17. Effective date — applicability.** [This act] is effective on passage and approval and applies to bonds authorized on or after [the effective date of this act].

Approved April 24, 2003

## CHAPTER NO. 493

[SB 444]

AN ACT GENERALLY REVISING SECURITIES LAWS, INSURANCE LAWS, AND ELDER AND PERSONS WITH DEVELOPMENTAL DISABILITIES ABUSE LAWS TO PROVIDE FOR THE PROTECTION OF CONSUMERS AND SENIOR CITIZENS AND PERSONS WITH DEVELOPMENTAL DISABILITIES WITH RESPECT TO THE MARKETING OF SECURITIES AND INSURANCE PRODUCTS; RESTRICTING THE MANNER IN WHICH INSURANCE PRODUCERS MAY ACT AS LEGAL GUARDIANS OF CLIENTS; EXPANDING THE DEFINITION OF "SECURITY" TO INCLUDE VIATICAL SETTLEMENT PURCHASE AGREEMENTS; MODIFYING THE DEFINITION OF "VIATICAL SETTLEMENT CONTRACT"; PROVIDING FOR PENALTIES AND OTHER REMEDIES WITH RESPECT TO PERSONS FAILING TO RESPOND TO CERTAIN INFORMATION REQUESTS OF THE INSURANCE COMMISSIONER; EXPANDING THE SCOPE FOR WHICH INJUNCTIONS AND OTHER REMEDIES ARE AVAILABLE UNDER INSURANCE LAWS; PROVIDING ADDITIONAL PENALTIES FOR DOMESTIC INSURERS FAILING TO PROPERLY MAINTAIN RECORDS; MODIFYING PENALTIES FOR INSURANCE PRODUCERS OR ADJUSTERS OPERATING WITHOUT A LICENSE; PROVIDING THAT THE DEFINITION OF "EXPLOITATION" UNDER ELDER AND PERSONS WITH DEVELOPMENTAL DISABILITIES ABUSE LAWS INCLUDES ACTS DONE IN THE COURSE OF AN OFFER OR SALE OF SECURITIES OR INSURANCE PRODUCTS; IMPOSING A POSSIBLE FELONY SENTENCE FOR A CONVICTION OF ELDER AND PERSONS WITH DEVELOPMENTAL DISABILITIES ABUSE; AMENDING SECTIONS 30-10-103, 33-1-315, 33-1-318, 33-3-401, 33-17-1004, 33-20-1302, 33-20-1315, 52-3-803, AND 52-3-825, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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



**Section 1. Restrictions on acting as legal guardian of insured or policyholder.** (1) Except as otherwise approved by the commissioner or court order, an insurance producer may not act as a legal guardian of an insured or policyholder if the insurance producer conducts insurance business with the insured or policyholder when the insurance business includes but is not limited to the solicitation, offer, sale, or replacement of insurance or a contract.

(2) This section does not apply to immediate family members.

**Section 2.** Section 30-10-103, MCA, is amended to read:

**“30-10-103. 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).

(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) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

(11) (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) 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) to others for compensation.

(c) Investment adviser 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) 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) 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) as the commissioner may by rule or order designate.
- (12) (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 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) 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) "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) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

(15) "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) "Person", for the purpose of parts 1 through 3 of this chapter, 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) "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.

(18) "Registered broker-dealer" means a broker-dealer registered pursuant to 30-10-201.

(19) "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) (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)~~ (i) an issuer in:

~~(i)(A)~~ (A) effecting a transaction in a security exempted by 30-10-104(1), (2), (3), (8), (9), (10), or (11);

~~(i)(B)~~ (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;

~~(i)(C)~~ (C) effecting transactions in a federal covered security described in section 18(b)(4)(D) of the Securities Act of 1933 for a qualified purchaser as defined in section 18(b)(3) of the Securities Act of 1933; or

~~(i)(D)~~ (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)~~ (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) "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", "Investment Advisors Act of 1940", and "Investment Company Act of 1940" mean the federal statutes of those names.

(22) (a) "Security" means any note; stock; treasury stock; bond; commodity investment contract; commodity option; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable shares; investment contract; voting-trust certificate; certificate of deposit for a security; *viatical settlement purchase agreement*; 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, in general, any interest or instrument commonly known as a security, any 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 any 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 foregoing.

(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) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico.

(24) "Transact", "transact business", or "transaction" includes the meanings of the terms "sale", "sell", and "offer".

**Section 3.** Section 33-1-315, MCA, is amended to read:

**"33-1-315. Witnesses — production of records — subpoena — failure to respond.** (1) With respect to the subject of any examination or investigation being conducted by the commissioner, or the commissioner's designee if general written authority has been given the designee by the commissioner, the commissioner or the designee may subpoena witnesses and administer oaths or affirmations and examine any individual under oath and may require and compel the production of records, books, papers, contracts, and other documents by attachments, if necessary. Subpoenas of witnesses must be served in the same manner as if issued from a district court.

(2) If in connection with ~~any~~ an examination of an insurer the commissioner *or the commissioner's designee* desires to examine an officer, director, or manager who is outside this state, the commissioner *or the commissioner's designee* may conduct and enforce by all appropriate and available means any examination under oath in any other state or territory of the United States in which ~~an~~ the officer, director, or manager ~~may then presently be~~ *is located*, to the full extent permitted by the laws of ~~another~~ *that* state or territory.

(3) If a witness fails to obey a subpoena to appear before the commissioner or the commissioner's designee or refuses to testify or answer any material question or to produce records, books, papers, contracts, or documents when required to do so, the commissioner or the commissioner's designee shall institute proceedings in the district court to compel obedience to the subpoena or other order or to punish the witness for neglect or refusal to obey the summons or other order.

(4) Witness fees and mileage, if claimed, must be allowed *on the same basis* as for testimony in a district court. Witness fees, mileage, and the actual

expenses necessarily incurred in securing attendance of witnesses and their testimony must be itemized and paid by the person being examined if the person is found to have been in violation of the law as to the matter with respect to which the ~~witness was~~ witnesses were subpoenaed.

(5) *A person who knowingly fails to attend, answer, and produce records, documents, or other evidence requested by the commissioner or the commissioner's designee, who knowingly fails to give full and truthful information or to answer in writing to any material inquiry of the commissioner or the commissioner's designee relative to the subject of an examination, investigation, or hearing, or who knowingly fails to appear and testify under oath before the commissioner or the commissioner's designee is subject to the provisions of 33-1-317 and 33-1-318."*

**Section 4.** Section 33-1-318, MCA, is amended to read:

**"33-1-318. Injunctions and other remedies.** (1) Whenever it appears to the commissioner that a person has engaged in or is about to engage in an act or practice constituting a violation of 33-1-107, 33-1-501, ~~33-1-1302~~, 33-14-201, chapters 2, 16 through 18, and 30 of this title, ~~part 13 of chapter 20 of this title~~, or part 4 of chapter 25 of this title, or any rule or order issued under this code, ~~he~~ *the commissioner* may:

(a) issue an order directing the person to cease and desist from continuing the act or practice after reasonable notice and opportunity for a hearing;

(b) issue a temporary cease and desist order that must remain in effect until 10 days after the hearing is held. If the commissioner issues a temporary cease and desist order, the respondent has 15 days from receipt of the order to make a written request for a hearing on the allegations contained in the order. The hearing must be held within 20 days of the commissioner's receipt of the hearing request unless the time is extended by agreement of the parties. If the respondent does not request a hearing within 15 days of receipt of the order and the commissioner does not order a hearing, the order becomes final.

(c) without the issuance of a cease and desist order, bring an action in a court of competent jurisdiction to enjoin ~~such~~ *the* acts or practices and to enforce compliance with this code or any rule or order issued under this code. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus must be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The commissioner may not be required to post a bond.

(2) If a hearing is held on a cease and desist order, both parties have 20 days from the date the hearing is concluded or from the date a transcript of the hearing is filed, if one is requested, to submit proposed findings of fact, conclusions of law, orders, and supporting briefs to the ~~hearing~~ *hearings* examiner. The parties have an additional 10 days within which to submit comments on the opposing party's proposed findings of fact, conclusions of law, orders, and briefs. A final order must ~~issue~~ *be issued* within 30 days of the submission of the comments.

(3) The commissioner may, after giving reasonable notice and an opportunity for a hearing under this section, impose a fine not to exceed \$5,000 ~~per~~ *for* each violation upon a person found to have engaged in an act or practice constituting a violation of a provision of this code or any rule or order issued under this code. The fine is in addition to all other penalties imposed by the laws of this state and must be collected by the commissioner in the name of the state

of Montana and deposited in the general fund. Imposition of a fine under this subsection is an order from which an appeal may be taken pursuant to 33-1-711. If a person fails to pay a fine referred to in this subsection, the amount of the fine is a lien upon all of the assets and property of that person in this state and may be recovered by suit by the commissioner and deposited in the general fund. Failure of the person to pay a fine also constitutes a forfeiture of ~~his~~ *the* right to do business in this state under this code.”

**Section 5.** Section 33-3-401, MCA, is amended to read:

**“33-3-401. Home office and records — penalty for unlawful removal of records or assets.** (1) ~~Every~~ *Each* domestic insurer ~~shall~~ *must* have and *shall* maintain its principal place of business and home office in this state and ~~shall keep therein~~ *maintain at its principal place of business or home office* complete records of its assets, transactions, and affairs in accordance with ~~such~~ methods and systems ~~as are~~ *as* customary or suitable ~~as to the kind or kinds of insurance transacted that it transacts.~~ Records of the insurer’s operations and other financial records reasonably related to its insurance operations for the preceding 5 years must be maintained and be available to the commissioner or ~~his~~ *the* commissioner’s ~~duly constituted~~ examiner.

(2) ~~Every~~ *Each* domestic insurer ~~shall~~ *must* have and *shall* maintain its assets in this state, except ~~as to~~ *for*:

(a) real property and *appurtenant* personal property ~~appurtenant thereto~~ lawfully owned by the insurer and located outside this state; and

(b) ~~such~~ property of the insurer ~~as may be~~ *that is* customary, necessary, and convenient to enable and facilitate the operation of its branch offices and regional home offices located outside this state as referred to in subsection (4) ~~below.~~

(3) Removal of all or a material part of the records or assets of a domestic insurer from this state except pursuant to a plan of merger or consolidation approved by the commissioner under this code or for ~~such~~ reasonable purposes and periods of time as may be approved by the commissioner in writing in advance of ~~such removal or concealment of such records or assets or material part thereof from the commissioner~~ is prohibited. Any person who removes or attempts to remove ~~such all or a material part of records or assets or such material part thereof~~ from the home office, ~~or~~ other place of business, or of safekeeping of the insurer in this state with the intent to remove the ~~same records or assets~~ from this state or who conceals or attempts to conceal ~~the same records or assets~~ from the commissioner, in violation of this subsection, shall upon conviction ~~thereof~~ be guilty of a felony punishable by a fine of not more than \$10,000 or by imprisonment in the penitentiary for not more than 5 years or by both ~~such~~ a fine and imprisonment in the discretion of the court. Upon any removal or attempted removal of ~~such~~ records or assets or upon retention of ~~such~~ records or assets or a material part ~~thereof of the records or assets~~ outside this state beyond the period ~~therefor~~ specified in the commissioner’s consent under which the records were ~~so removed thereat~~ or upon concealment of or attempt to conceal records or assets in violation of this section, the commissioner may institute delinquency proceedings against the insurer pursuant to the provisions of chapter 2, part 13.

(4) This section ~~shall~~ *does not* be ~~deemed to~~ prohibit or prevent an insurer from:

(a) establishing and maintaining branch offices or regional home offices in other states ~~where~~ when necessary or convenient to the transaction of its business and keeping ~~therein~~ there the detailed records and assets customary and necessary for the servicing of its insurance in force and affairs in the territory served by ~~such an~~ the out-of-state office, as long as ~~such~~ the records and assets are made readily available at ~~such~~ that office for examination by the commissioner ~~at his request~~ when requested;

(b) having, depositing, or transmitting funds and assets of the insurer in or to jurisdictions outside of this state as reasonably and customarily required in the regular course of its business;

(c) making deposits under custodial arrangements as provided by 33-2-604(3).

(5) *An insurer that fails to maintain records and make them available to the commissioner's staff is subject to the penalties and procedures in 33-1-317, 33-1-318, and 33-2-119.*"

**Section 6.** Section 33-17-1004, MCA, is amended to read:

**"33-17-1004. Acting as insurance producer or adjuster without license — penalty.** ~~Except as provided~~ *In addition to the requirements and penalties described in 33-17-201 and 33-17-411, a person who, in this state, acts as an insurance producer or adjuster without having authority to do so by virtue of a license issued and in force pursuant to this chapter is subject to the provisions of 33-1-317 and 33-1-318 and may be subject to conviction of a crime.*

*(2) A person convicted under this section shall, for a first conviction, guilty of a misdemeanor and upon conviction shall be fined \$500 or imprisoned in the county jail for 90 days, or both. For a second conviction, the person shall be fined an amount not to exceed \$1,000 or incarcerated for a term not to exceed 1 year, or both. For a third or subsequent conviction, the person shall be fined an amount not to exceed \$5,000 or incarcerated for a term not to exceed 2 years, or both."*

**Section 7.** Section 33-20-1302, MCA, is amended to read:

**"33-20-1302. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) *"Financing entity" means an underwriter, placement agent, lender, or any entity, other than a nonaccredited investor, that has a direct ownership in a policy or certificate that is the subject of a viatical settlement contract, whose sole activity related to the transaction is the provision of funds to effect the viatical settlement contract, and who has an agreement in writing with one or more licensed viatical settlement providers.*

(2) *"Related provider trust" means a trust established by a licensed viatical settlement provider or a financing entity for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a financing transaction. The trust must have a written agreement with the viatical settlement provider under which the licensed viatical settlement provider is responsible for ensuring compliance with all statutory and regulatory requirements and under which the trust agrees to make all records and files related to viatical settlement transactions available to the commissioner.*

(3) *"Special purpose entity" means a corporation, partnership, trust, limited liability company, or other similar entity formed solely to provide, either directly or indirectly, access to institutional capital markets for a financing entity or licensed viatical settlement provider.*



~~(1)~~(4) (a) "Viatical settlement broker" means an individual who, for a fee, commission, or other consideration:

- (i) offers or advertises the availability of viatical settlement contracts;
- (ii) introduces holders of life insurance policies or certificates insuring the lives of individuals with a terminal illness or condition to viatical settlement providers; or
- (iii) offers or attempts to negotiate viatical settlement contracts between the policyholders or certificate holders and one or more viatical settlement providers.

(b) Viatical settlement broker does not mean an attorney, accountant, or financial planner retained to represent the policyholder or certificate holder unless compensation paid to the attorney, accountant, or consultant is paid by the viatical settlement provider.

~~(2)~~(5) (a) "Viatical settlement contract" means a written agreement ~~between a viatical settlement provider and the holder of a group or individual life insurance policy insuring the life of an individual with a terminal illness or condition or between a viatical settlement provider and the certificate holder of a policy in which:~~

~~(a) the terms establish that the viatical settlement provider pays something of value in return for the policyholder's or certificate holder's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider; and~~

~~(b) the policyholder or certificate holder holds an irrevocable right under the policy or certificate to name the beneficiary, establishing the terms under which compensation or anything of value will be paid, when the compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the viator's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of any portion of the insurance policy or certificate of insurance.~~

(b) *The term includes:*

(i) *a contract for a loan or other financing transaction with a viator secured primarily by an individual or group life insurance policy, other than a loan by a life insurance company pursuant to the terms of the life insurance contract, or a loan secured by the cash value of a policy; or*

(ii) *an agreement with a viator to transfer ownership or change the beneficiary designation at a later date regardless of the date that compensation is paid to the viator.*

(c) *The term does not mean a written agreement entered into between a viator and a person having an insurable interest in the viator's life.*

~~(3)~~(6) (a) "Viatical settlement provider" means a person who solicits, enters into, or negotiates viatical settlement contracts or offers to enter into or negotiate viatical settlement contracts.

(b) ~~A viatical settlement provider may use the term "life settlement provider" to describe the business transacted under the license and may use the term "life settlement contract" instead of "viatical settlement contract".~~

(e) Viatical settlement provider does not mean:

(i) a bank, savings bank, savings and loan association, credit union, or other licensed lending institution that takes an assignment of a life insurance policy only as collateral for a loan;

(ii) an insurer issuing a life insurance policy providing accelerated benefits pursuant to 33-20-127 or pursuant to the laws of the state to which the policy was subject when issued;

(iii) an individual who enters into a single agreement in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit; or

(iv) any corporation, partnership, or partner that purchases a life insurance contract of an employee or retiree of the corporation or of a partner. The settlement made on any contract exempt under this section must be reasonable and subject to the standards imposed on licensees under 33-20-1304.

~~(4)~~(7) (a) "Viatical settlement purchase agreement" means a contract or agreement entered into by a viatical settlement purchaser with a viatical settlement provider to purchase a life insurance policy or an interest in a life insurance policy for the purpose of deriving an economic benefit.

(b) A viatical settlement purchase agreement does not include a viatical settlement contract.

~~(5)~~(8) (a) "Viatical settlement purchaser" means a person who, for the purpose of deriving an economic benefit:

(i) gives consideration for a life insurance policy or an interest in the death benefits of a life insurance policy; or

(ii) owns, acquires, or is entitled to a beneficial interest in a trust that owns a viatical settlement contract or that is the beneficiary of a life insurance policy that has been or will be the subject of a viatical settlement contract.

(b) A viatical settlement purchaser does not include a licensed viatical settlement provider, ~~or~~ a licensed viatical settlement broker, a qualified institutional buyer as defined in 17 CFR 230.144A, a financing entity, a special purpose entity, or a related provider trust.

(9) (a) "Viator" means the owner of a life insurance policy or the certificate holder under a group policy who enters or seeks to enter into a viatical settlement contract.

(b) The term does not include a licensed viatical settlement provider, a licensed viatical settlement broker, a qualified institutional buyer as defined in 17 CFR 230.144A, a financing entity, a special purpose entity, or a related provider trust."

**Section 8.** Section 33-20-1315, MCA, is amended to read:

**"33-20-1315. Rules — standards — bond.** The commissioner may, in accordance with the provisions of 33-1-313, adopt rules for the purpose of carrying out this part. In addition, the commissioner:

(1) may establish standards for evaluating reasonableness of payments under viatical settlement contracts *for insured persons who are terminally ill or chronically ill*. The authority includes but is not limited to regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale, devise, or bequest of a benefit under a life insurance policy. For the purpose of the standards, the commissioner shall consider payments made in regional and national viatical settlement markets to the extent that this information is

available, as well as model standards developed by the national association of insurance commissioners.

(2) shall require a bond ~~and an errors and omissions insurance policy of both kinds of licensees or other mechanism for financial accountability of viatical settlement providers and viatical settlement brokers, and~~

(3) shall adopt rules to establish:

(a) trade practice standards for the purpose of regulating advertising and solicitation of viatical settlement contracts; and

(b) fees that are commensurate with fees charged pursuant to 33-2-708; and

(4) *shall require viatical settlement providers or viatical settlement brokers to pay an amount greater than the cash surrender value or accelerated death benefit if the insured is not terminally ill or chronically ill.*

**Section 9.** Section 52-3-803, MCA, is amended to read:

**“52-3-803. Definitions.** As used in this part, the following definitions apply:

(1) “Abuse” means:

(a) the infliction of physical or mental injury; or

(b) the deprivation of food, shelter, clothing, or services necessary to maintain the physical or mental health of an older person or a person with a developmental disability without lawful authority. A declaration made pursuant to 50-9-103 constitutes lawful authority.

(2) “Department” means the department of public health and human services provided for in 2-15-2201.

(3) “Exploitation” means:

(a) the unreasonable use of an older person or a person with a developmental disability or of a power of attorney, conservatorship, or guardianship with regard to an older person or a person with a developmental disability *in order to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of the person’s money, assets, or property by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of permanently depriving the older person or person with a developmental disability of the ownership, use, benefit, or possession of the person’s money, assets, or property;*

(b) an act taken by a person who has the trust and confidence of an older person or a person with a developmental disability to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of the person’s money, assets, or property by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of permanently depriving the older person or person with a developmental disability of the ownership, use, or benefit of the person’s money, assets, or property;

(c) *the unreasonable use of an older person or a person with a developmental disability or of a power of attorney, conservatorship, or guardianship with regard to an older person or a person with a developmental disability done in the course of an offer or sale of insurance or securities in order to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of the person’s money, assets, or property by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of permanently*

*depriving the older person or person with a developmental disability of the ownership, use, benefit, or possession of the person's money, assets, or property.*

(4) "Incapacitated person" has the meaning given in 72-5-101.

(5) "Long-term care facility" means a facility defined in 50-5-101.

(6) "Mental injury" means an identifiable and substantial impairment of a person's intellectual or psychological functioning or well-being.

(7) "Neglect" means the failure of a person who has assumed legal responsibility or a contractual obligation for caring for an older person or a person with a developmental disability or who has voluntarily assumed responsibility for the person's care, including an employee of a public or private residential institution, facility, home, or agency, to provide food, shelter, clothing, or services necessary to maintain the physical or mental health of the older person or the person with a developmental disability.

(8) "Older person" means a person who is at least 60 years of age. For purposes of prosecution under 52-3-825(2), the person 60 years of age or older must be unable to provide personal protection from abuse, sexual abuse, neglect, or exploitation because of a mental or physical impairment or because of frailties or dependencies brought about by advanced age.

(9) "Person with a developmental disability" means a person 18 years of age or older who has a developmental disability, as defined in 53-20-102.

(10) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function.

(11) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5."

**Section 10.** Section 52-3-825, MCA, is amended to read:

**"52-3-825. Penalties.** (1) ~~Any~~ A person who purposely or knowingly fails to make a report required by 52-3-811 or discloses or fails to disclose the contents of a case record or report in violation of 52-3-813 is guilty of an offense and upon conviction is punishable as provided in 46-18-212.

(2) ~~Any~~ An individual who purposely or knowingly abuses, sexually abuses, neglects, or exploits an older person or a person with a developmental disability is guilty of a *crime misdemeanor* and upon a first conviction may 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. Upon a second or succeeding conviction, an individual ~~and~~ may be imprisoned for a term not to exceed 10 years and may or be fined an amount not to exceed \$10,000, or both."

**Section 11. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 33, chapter 17, part 10, and the provisions of Title 33, chapter 17, part 10, apply to [section 1].

**Section 12. Coordination instruction.** If House Bill No. 17 and [this act] are both passed and approved, then [section 10 of this act], amending 52-3-825, is void.

**Section 13. Effective date.** [This act] is effective on passage and approval.

**Section 14. Applicability.** [This act] applies to viatical settlement contracts entered into on or after [the effective date of this act].

Approved April 24, 2003

**CHAPTER NO. 494**

[HB 3]

AN ACT APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 2003; 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 only necessary and ordinary expenditures for the fiscal year ending June 30, 2003. The unspent balance of any appropriation must revert to the general fund.

**Section 2. Appropriations — authorization to expend money.** (1) Except as provided in subsection (2), the following money is appropriated, subject to the terms and conditions of [section 1].

Agency and Program	Amount	Fund
Department of Public Health & Human Services		
Disability Services Division	\$924,354	General Fund
Child Support Enforcement Division	\$1,200,000	General Fund
Department of Natural Resources & Conservation		
Forestry	\$1,325,762	General Fund
Department of Justice		
Legal Services Major Litigation	\$110,000	General Fund
Highway Patrol Prisoner Per Diem	\$390,000	General Fund
Office of Public Instruction		
School BASE Aid	\$1,940,000	General Fund
Commissioner of Higher Education		
Indirect Cost Recoveries	\$76,000	General Fund

(2) If the actual common school interest and income revenue deposited in the guarantee account established in 20-9-622 by the end of fiscal year 2003 is less than the amount of common school interest and income revenue estimated for fiscal year 2003 in House Joint Resolution No. 2 as passed and approved, then the office of public instruction school BASE aid appropriation for the fiscal year ending June 30, 2003, as provided in subsection (1) of this section, is increased by the amount of the difference between the amount of common school interest and income revenue estimated in House Joint Resolution No. 2 as passed and approved and the actual receipts in the guarantee account, up to a maximum of \$8 million.

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

Approved April 25, 2003

**CHAPTER NO. 495**

[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, 2003; PROVIDING THAT CERTAIN APPROPRIATIONS CONTINUE INTO STATE AND FEDERAL FISCAL YEAR 2005; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY 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 expenditure is authorized by [sections 1 and 2].

**Section 2. Appropriations.** The following money is appropriated, subject to all terms and conditions of [sections 1 and 2]:

Agency and Program	FY	Amount	Fund
Montana Supreme Court			
District Court Operations			
Probation Miscellaneous Revenue	2003	\$100,000	State Special
State Auditor's Office			
Securities			
National White Collar Crime Center	2003	\$39,311	Federal Funds
Office of Public Instruction			
State Level Activities			
All remaining fiscal year 2003 federal budget amendment authority for reading excellence is authorized to continue into federal fiscal year 2004.			
Local Education Activities			
Reading Excellence	2003	\$10,366,578	Federal Funds
All remaining fiscal year 2003 federal budget amendment authority for reading excellence for local education activities is authorized to continue into federal fiscal year 2004.			
Board of Crime Control			
Justice System Support Services			
Forensic Science Improvements	2003	\$29,178	Federal Funds
All remaining fiscal year 2003 federal budget amendment authority for forensic science improvements is authorized to continue into state fiscal year 2004.			
Department of Justice			
Legal Services Division			
All remaining fiscal year 2003 federal budget amendment authority for encourage to arrest is authorized to continue into federal fiscal year 2004.			

#### Division of Criminal Investigation

All remaining fiscal year 2003 federal budget amendment authority for the Rocky Mountain high intensity drug trafficking area is authorized to continue into state fiscal year 2004.

#### Forensic Sciences Division

All remaining fiscal year 2003 federal budget amendment authority for the Rocky Mountain high intensity drug trafficking area is authorized to continue into state fiscal year 2004.

#### Montana Arts Council

##### Promotion of the Arts

All remaining fiscal year 2003 federal budget amendment authority from the national endowment for the arts virtual exhibit of Montana folklife and folk art is authorized to continue into state fiscal year 2004.

#### Historical Society

##### Administration Program

All remaining fiscal year 2003 federal budget amendment authority for the Montana historical society press administration grant is authorized to continue into state fiscal year 2005.

##### Library Program

National Archives and Records	2003	\$9,320	Federal Funds
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All remaining fiscal year 2003 federal budget amendment authority for the national archives and records is authorized to continue into state fiscal year 2004.

##### Publications Program

All remaining fiscal year 2003 federal budget amendment authority for the Montana historical society press is authorized to continue into state fiscal year 2005.

##### Historic Preservation Program

##### Heritage Databases -

Bureau of Land Management	2003	\$30,000	Federal Funds
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All remaining fiscal year 2003 federal budget amendment authority for the heritage databases - bureau of land management is authorized to continue into state fiscal year 2004.

##### Heritage Preservation Program

##### Virginia City/Nevada City

Wildfire Mitigation	2003	\$63,165	Federal Funds
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All remaining fiscal year 2003 federal budget amendment authority from the federal emergency management agency for the Virginia City and Nevada City wildfire hazard mitigation is authorized to continue into state fiscal year 2004.

##### Heritage Commission

All remaining fiscal year 2003 federal budget amendment authority for the institute of museum and library services is authorized to continue into state fiscal year 2004.

##### Lewis and Clark Bicentennial Commission

All remaining fiscal year 2003 federal budget amendment authority for the national park service national cost share agreement for the Lewis and Clark national historic trail bicentennial observance is authorized to continue into state fiscal year 2004.

Department of Fish, Wildlife, and Parks

Fisheries Division

Pallid Sturgeon at Miles City	2003	\$42,893	Federal Funds
Fish Restoration and Irrigation			
Mitigation Act	2003	\$15,720	Federal Funds
Native Fishes at Fort Peck Dam	2003	\$461,203	Federal Funds

All remaining fiscal year 2003 federal budget amendment authority for the pallid sturgeon production at the Miles City hatchery and Fish Restoration and Irrigation Mitigation Act is authorized to continue into state fiscal year 2004.

All remaining fiscal year 2003 federal budget amendment authority for the research on responses of native fishes at Fort Peck dam is authorized to continue into federal fiscal year 2004.

All remaining fiscal year 2003 federal budget amendment authority for the U.S. fish and wildlife service for sauger conservation in the Missouri and Yellowstone Rivers is authorized to continue into state fiscal year 2004.

All remaining fiscal year 2003 federal budget amendment authority from the state wildlife prairie fish survey is authorized to continue into state fiscal year 2004.

Capital Outlay Program

All remaining fiscal year 2003 federal budget amendment authority for the U.S. fish and wildlife service for the Thompson/Fisher drainage is authorized to continue into federal fiscal year 2005.

Parks Division

Lewis and Clark Bicentennial	2003	\$65,000	Federal Funds
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All remaining fiscal year 2003 federal budget amendment authority for the Lewis and Clark bicentennial is authorized to continue into state fiscal year 2005.

Department of Environmental Quality

Planning, Prevention, and Assistance Division

All remaining fiscal year 2003 federal budget amendment authority for the monitoring and writing the TMDL supplemental is authorized to continue into state fiscal year 2004.

All remaining fiscal year 2003 federal budget amendment authority for developing and implementing a nationwide fine particular monitoring network is authorized to continue into federal fiscal year 2004.

All remaining fiscal year 2003 federal budget amendment authority for wetlands protection in Montana is authorized to continue into federal fiscal year 2005.

All remaining fiscal year 2003 federal budget amendment authority for state and tribal assistance grants is authorized to continue into federal fiscal year 2005.



## Remediation Division

All remaining fiscal year 2003 federal budget amendment authority for the Lockwood solvent grant is authorized to continue into state fiscal year 2004.

## Department of Livestock

## Animal Health Division

## Greater Yellowstone Interagency

Brucellosis Committee	2003	\$61,533	Federal Funds
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All remaining fiscal year 2003 federal budget amendment authority for the greater Yellowstone interagency brucellosis committee is authorized to continue into state fiscal year 2004.

## Department of Natural Resources and Conservation

## Water Resources Division

All remaining fiscal year 2003 federal budget amendment authority for water management activities is authorized to continue into federal fiscal year 2004.

## Forestry/Trust Lands

## Conservation Reserve Program

Grant Number 5	2003	\$5,621	Federal Funds
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## Conservation Reserve Program

Grant Number 6	2003	\$6,951	Federal Funds
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Stryker Basin Trail System Grant	2003	\$7,292	Federal Funds
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Hazardous Fuel Reduction	2003	\$232,500	Federal Funds
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Fire Suppression	2003	\$690,569	Federal Funds
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All remaining fiscal year 2003 federal budget amendment authority for the conservation reserve program grants is authorized to continue into federal fiscal year 2004.

All remaining fiscal year 2003 federal budget amendment authority for the Stryker basin trail system grant is authorized to continue into state fiscal year 2004.

All remaining fiscal year 2003 federal budget amendment authority for hazardous fuel reduction is authorized to continue into federal fiscal year 2005.

All remaining fiscal year 2003 federal budget amendment authority for defensible space is authorized to continue into federal fiscal year 2004.

All remaining fiscal year 2003 federal budget amendment authority for habitat conservation is authorized to continue into state fiscal year 2005.

## Department of Administration

## Information Technology Services Division

All remaining fiscal year 2003 federal budget amendment authority for the GIS cadastral mapping project is authorized to continue into federal fiscal year 2005.

## Department of Agriculture

## Central Management Division

All remaining fiscal year 2003 federal budget amendment authority for the federal noxious weed grant is authorized to continue into federal fiscal year 2005.

#### Agricultural Sciences Division

Organic Producers' Cost Share	2003	\$110,000	Federal Funds
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All remaining fiscal year 2003 federal budget amendment authority for the organic producers' cost share is authorized to continue in to federal fiscal year 2004.

All remaining fiscal year 2003 federal budget amendment authority for the federal noxious weed grant is authorized to continue into federal fiscal year 2005.

#### Department of Corrections

##### Juvenile Corrections

All remaining fiscal year 2003 federal budget amendment authority for the U.S. department of justice - corrections serious and violent offender reentry initiative grant is authorized to continue into state fiscal year 2005.

#### Department of Commerce

##### Business Resources Division

All remaining fiscal year 2003 federal budget amendment authority for the U.S. forest service grant is authorized to continue into federal fiscal year 2004.

#### Department of Labor and Industry

##### Workforce Services Division

###### One-Stop Workforce

Investment Act Grant	2003	\$25,000	Federal Funds
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###### One-Stop Glendive Workforce

Investment Act Grant	2003	\$25,000	Federal Funds
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Special Reed Act Funds	2003	\$1,839,000	Federal Funds
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All remaining fiscal year 2003 federal budget amendment authority for special Reed Act funds is authorized to continue into federal fiscal year 2005 for legitimate Wagner-Peyser Act employment services activities, unemployment insurance benefits, and unemployment insurance administration.

##### Unemployment Insurance Division

###### National Customer Service

Award Grant	2003	\$25,000	Federal Funds
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Special Reed Act Funds	2003	\$12,601,627	Federal Funds
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All remaining fiscal year 2003 federal budget amendment authority for the national customer service award grant is authorized to continue into federal fiscal year 2004.

All remaining fiscal year 2003 federal budget amendment authority for internet unemployment claims is authorized to continue into state fiscal year 2005.

All remaining fiscal year 2003 federal budget amendment authority for special Reed Act funds is authorized to continue into federal fiscal year 2005 for legitimate Wagner-Peyser Act employment services activities, unemployment

insurance benefits, and unemployment insurance administration. The \$12,601,627 of special Reed Act federal funds will be reduced by the amount of any special Reed Act federal funds that is contained in the General Appropriations Act of 2003 for the department in item 1.

#### Department of Military Affairs

##### Army National Guard

Facility Operation and Maintenance	2003	\$698,000	Federal Funds
Communications Funding	2003	\$375,524	Federal Funds
Army Recruiting Office Lease	2003	\$18,000	Federal Funds

All remaining fiscal year 2003 federal budget amendment authority for communications funding and for the army recruiting office lease is authorized to continue into state fiscal year 2004.

##### Air National Guard

Firefighters and Security Funds	2003	\$167,322	Federal Funds
MTANG Firefighter	2003	\$32,000	Federal Funds

All remaining fiscal year 2003 federal budget amendment authority for MTANG firefighter funds is authorized to continue into state fiscal year 2004.

##### Disaster and Emergency Services

All remaining fiscal year 2003 federal budget amendment authority for predisaster mitigation is authorized to continue into state fiscal year 2004.

All remaining fiscal year 2003 federal budget amendment authority for the state domestic preparedness equipment program is authorized to continue into state fiscal year 2005.

All remaining fiscal year 2003 federal budget amendment authority for the state domestic preparedness program is authorized to continue into federal fiscal year 2004.

All remaining fiscal year 2003 federal budget amendment authority for the federal emergency management agency supplemental federal planning grant funds is authorized to continue into state fiscal year 2004.

#### Department of Public Health and Human Services

##### Human and Community Services Division

2003 LIEAP Award	2003	\$1,038,139	Federal Funds
Food Stamp Program	2003	\$6,000,000	Federal Funds

All remaining fiscal year 2003 federal budget amendment authority for the 2003 LIEAP award, the food stamp program, and the child care apprenticeship grant is authorized to continue into state fiscal year 2004.

##### Child and Family Services Division

All remaining fiscal year 2003 federal budget amendment authority for the Walla Walla IV-E grant is authorized to continue into state fiscal year 2004.

##### Child Support Enforcement Division

Special Improvement Project	2003	\$149,464	Federal Funds
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All remaining fiscal year 2003 federal budget amendment authority for the special improvement project is authorized to continue into state fiscal year 2004.

**Health Policy and Services Division**

All remaining fiscal year 2003 federal budget amendment authority for the rape prevention and education grant is authorized to continue into federal fiscal year 2005.

**Operations and Technology Division**

All remaining fiscal year 2003 federal budget amendment authority for the electronic death registration system is authorized to continue into federal fiscal year 2004.

**Disability Services Division**

All remaining fiscal year 2003 federal budget amendment authority for the systems change grant is authorized to continue into federal fiscal year 2005.

**Senior and Long-Term Care Division**

All remaining fiscal year 2003 federal budget amendment authority for community-integrated personal assistance services and supports is authorized to continue into federal fiscal year 2004.

**Section 3. Appropriation.** There is appropriated for fiscal year 2003 to the Montana supreme court \$500,000 of federal budget amendment authority for a statewide video network funded by the United States department of justice, office of community oriented policing services.

**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 band of Chippewa.

**Section 5. Effective date.** [This act] is effective on passage and approval.

**Section 6. Retroactive applicability.** [Section 3] applies retroactively, within the meaning of 1-2-109, to February 10, 2003.

Approved April 25, 2003

**CHAPTER NO. 496**

[HB 10]

AN ACT ALLOCATING REVENUE FROM THE RESOURCE INDEMNITY AND GROUND WATER ASSESSMENT TAX TO MAKE DEBT SERVICE PAYMENTS ON CERCLA BONDS; CREATING A CERCLA COST RECOVERY SPECIAL REVENUE ACCOUNT; COORDINATING CERTAIN PROVISIONS OF THE CERCLA MATCH DEBT SERVICE ACCOUNT, CERCLA BONDS, THE HAZARDOUS WASTE/CERCLA SPECIAL REVENUE ACCOUNT, AND THE CERCLA COST RECOVERY SPECIAL REVENUE ACCOUNT; AMENDING SECTIONS 15-38-106, 75-10-621, 75-10-622, AND 75-10-623, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 15-38-106, MCA, is amended to read:

**“15-38-106. (Temporary) Payment of tax — records — collection of taxes — refunds.** (1) The tax imposed by this chapter must be paid by each person to which the tax applies, on or before March 31, on the value of product in the year preceding January 1 of the year in which the tax is paid. The tax must

be paid to the department at the time that the statement of yield for the preceding calendar year is filed with the department.

(2) The department shall, in accordance with the provisions of 15-1-501, deposit in the following order:

(a) *annually in due course, from the proceeds of the tax to the CERCLA match debt service fund provided in 75-10-622, the amount necessary, as certified by the department of environmental quality, after crediting to the CERCLA match debt service fund amounts transferred from the CERCLA cost recovery account established under [section 5], to pay the principal of, premium, if any, and interest during the next fiscal year on bonds or notes issued pursuant to 75-10-623;*

~~(b)~~ \$366,000 of the proceeds of the resource indemnity and ground water assessment taxes in the ground water assessment account established by 85-2-905;

~~(c)~~ 50% of the remaining proceeds in the reclamation and development grants account established by 90-2-1104, for the purpose of making grants to be used for mineral development reclamation projects;

~~(d)~~ \$150,000 of the remaining proceeds of the resource indemnity and ground water assessment taxes in the natural resource workers' tuition scholarship account established in 39-10-106 for the first fiscal year following July 1 immediately after the date that the governor certifies that the resource indemnity trust fund balance has reached \$100 million and for succeeding fiscal years, the amount required under 39-10-106(4);

~~(e)~~ all remaining proceeds in the orphan share account established in 75-10-743.

(3) Each person to whom the tax applies shall keep records in accordance with 15-38-105, and the records are subject to inspection by the department upon reasonable notice during normal business hours.

(4) The department shall examine the statement and compute the taxes to be imposed, and the amount computed by the department is the tax imposed, assessed against, and payable by the taxpayer. If the tax found to be due is greater than the amount paid, the excess must be paid by the taxpayer to the department within 30 days after written notice of the amount of deficiency is mailed by the department to the taxpayer. If the tax imposed is less than the amount paid, the difference must be applied as a tax credit against tax liability for subsequent years or refunded if requested by the taxpayer. (Terminates June 30, 2007—sec. 10, Ch. 586, L. 2001.)

**15-38-106. (Effective July 1, 2007) Payment of tax — records — collection of taxes — refunds.** (1) The tax imposed by this chapter must be paid by each person to which the tax applies, on or before March 31, on the value of product in the year preceding January 1 of the year in which the tax is paid. The tax must be paid to the department at the time that the statement of yield for the preceding calendar year is filed with the department.

(2) The department shall, in accordance with the provisions of 15-1-501, deposit in the following order:

(a) *annually in due course, from the proceeds of the tax to the CERCLA match debt service fund provided in 75-10-622, the amount necessary, as certified by the department of environmental quality, after crediting to the CERCLA match debt service fund amounts transferred from the CERCLA cost recovery account*

established under [section 5], to pay the principal of, premium, if any, and interest during the next fiscal year on bonds or notes issued pursuant to 75-10-623;

~~(a)~~(b) \$366,000 of the proceeds in the ground water assessment account established by 85-2-905;

~~(b)~~(c) 50% of the remaining proceeds in the orphan share account established in 75-10-743; and

~~(c)~~(d) all remaining proceeds in the reclamation and development grants account established by 90-2-1104, for the purpose of making grants to be used for mineral development reclamation projects.

(3) Each person to whom the tax applies shall keep records in accordance with 15-38-105, and the records are subject to inspection by the department upon reasonable notice during normal business hours.

(4) The department shall examine the statement and compute the taxes to be imposed, and the amount computed by the department is the tax imposed, assessed against, and payable by the taxpayer. If the tax found to be due is greater than the amount paid, the excess must be paid by the taxpayer to the department within 30 days after written notice of the amount of deficiency is mailed by the department to the taxpayer. If the tax imposed is less than the amount paid, the difference must be applied as a tax credit against tax liability for subsequent years or refunded if requested by the taxpayer.”

**Section 2.** Section 75-10-621, MCA, is amended to read:

**“75-10-621. Hazardous waste/CERCLA special revenue account.** (1) There is a hazardous waste/CERCLA special revenue account within the state special revenue fund established in 17-2-102.

(2) There must be paid into the hazardous waste/CERCLA account:

(a) revenue obtained from the interest income of the resource indemnity trust fund under the provisions of 15-38-202, together with interest accruing on that revenue;

(b) all proceeds of bonds or notes issued under 75-10-623 and all interest earned on proceeds of the bonds or notes; and

(c) revenue from penalties or damages collected under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended in 1986 (CERCLA).

(3) Appropriations may be made from the hazardous waste/CERCLA account only for the following purposes and subject to the following conditions:

~~(a) funds are statutorily appropriated, as provided in 17-7-502(4), to the CERCLA match debt service account necessary to make principal, interest, and premium payments due on CERCLA bonds;~~

~~(b)~~(a) not more than one-half of the interest income received for any biennium from the resource indemnity trust fund may be appropriated on a biennial basis for:

(i) implementation of the Montana Hazardous Waste Act, including regulation of underground storage tanks and the state share to obtain matching federal funds;

(ii) implementation of Title 75, chapter 10, part 6, pertaining to state assistance to and cooperation with the federal government for remedial action under CERCLA;

(iii) expenses of the department in administering and overseeing the implementation of Title 75, chapter 10, parts 4 and 6; and

(iv) state expenses relating to investigation and remedial action for any hazardous substance defined in 75-10-602; and

~~(e)(b)~~ to the extent funds are available after the appropriations in ~~subsections subsection~~ subsection (3)(a) ~~and (3)(b)~~, the department may, as appropriate, seek authorization from the legislature or, when the legislature is not in session, through the budget amendment process provided for in Title 17, chapter 7, part 4, to spend funds for:

(i) state participation in remedial action under section 104 of CERCLA;

(ii) state costs for maintenance of sites at which remedial action under CERCLA has been completed; and

(iii) the state share to obtain matching federal funds for underground storage tank corrective action.

(4) For the purposes of subsection ~~(3)(e)~~ (3)(b), the legislature finds that a need for state special revenue to obtain matching federal funds for underground storage tank corrective action or for remedial action under section 104 of CERCLA constitutes a serious unforeseen and unanticipated circumstance for the purpose of meeting the definition of "emergency" in 17-7-102. The legislature further finds that the inability of the department to match the federal funds as the funds become available would seriously impair the functions of the department in carrying out its responsibilities under Title 75, chapter 10, parts 4 and 6.

(5) There is no dollar limit to the hazardous waste/CERCLA account. Unused balances remain in the account until appropriated by the legislature for the purposes specified in this section."

**Section 3.** Section 75-10-622, MCA, is amended to read:

**"75-10-622. CERCLA match debt service fund.** (1) There is a CERCLA match debt service fund within the debt service fund type established in 17-2-102.

(2) The state pledges, allocates, and directs to be credited to the CERCLA match debt service fund ~~as received an amount necessary to satisfy principal and interest payments due on outstanding CERCLA bonds~~ money from the resource indemnity and ground water assessment tax, as provided in 15-38-106, and from the CERCLA cost recovery account, as provided in [section 5].

(3) *Money in the CERCLA match debt service fund is statutorily appropriated, as provided in 17-7-502(4).*"

**Section 4.** Section 75-10-623, MCA, is amended to read:

**"75-10-623. CERCLA bonds.** (1) When authorized by the legislature and within limits of the authorization and the further limitations established in this section, the board of examiners may issue and sell CERCLA bonds of the state in the amount and manner it considers necessary and proper to ~~finance the match requirements~~ fund state participation in remedial action under section 104 of CERCLA, as amended, state costs for maintenance of sites at which remedial action under CERCLA has been completed, the state share required to obtain

~~matching federal funds and to finance the match requirements for federal money~~ for underground storage tank corrective action, *and costs of issuing the bonds or notes*. The full faith and credit and taxing powers of the state are pledged for the prompt and full payment of all bonds issued and interest and redemption premiums payable on the bonds according to their terms.

(2) Each series of CERCLA bonds may be issued by the board of examiners upon request of the department of environmental quality, at public or private sale, in the denominations and forms, whether payable to bearer with attached interest coupons or registered as to principal or as to both principal and interest, with provisions for conversion or exchange and for the issuance of notes in anticipation of the issuance of definitive bonds, bearing interest at a rate or rates, maturing at a rate or rates, maturing at the time or times not exceeding 30 years from date of issue, subject to optional or mandatory redemption at earlier times and prices and upon notice, with provisions for payment and discharge by the deposit of funds or securities in escrow for that purpose, and payable at the office of the banking institution or institutions within or outside the state, as the board of examiners determines, subject to the limitations contained in 17-5-731 and this section.

(3) In the issuance of each series of CERCLA bonds, the interest rates, maturities, and any mandatory redemption provisions of the bonds must be established in a manner that the funds then specifically pledged and appropriated by law to the CERCLA match debt service fund will, in the judgment of the board of examiners, be received in an amount sufficient in each year to pay all principal, redemption premiums, and interest due and payable in that year with respect to that and all prior series of the bonds, except outstanding bonds as to which the obligation of the state has been discharged by the deposit of funds or securities sufficient for their payment in accordance with the terms of the resolutions by which they are authorized to be issued.

(4) In all other respects, the board of examiners is authorized to prescribe the form and terms of the bonds and notes and shall do whatever is lawful and necessary for their issuance and payment. The bonds, notes, and any interest coupons appurtenant to the bonds and notes must be signed by the members of the board of examiners, and the bonds and notes must be issued under the great seal of the state of Montana. The bonds, notes, and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all the bonds and notes issued and sold.

(5) All proceeds of bonds or notes issued under this section must be deposited in the hazardous waste/CERCLA special revenue account established in 75-10-621.

(6) All actions taken by the board of examiners under this section must be authorized by a vote of a majority of the members."

**Section 5. CERCLA cost recovery account.** (1) There is a CERCLA cost recovery special revenue account in the state special revenue fund established in 17-2-102.

(2) There must be deposited in the CERCLA cost recovery account amounts obtained by the department through cost recovery under CERCLA for costs paid, in whole or in part, with the proceeds of CERCLA bonds authorized in 75-10-623, together with interest on the proceeds.



(3) (a) Money in the CERCLA cost recovery account must be transferred to the CERCLA match debt service fund in each fiscal year in an amount then available, but not to exceed the amount necessary to pay the principal of, premium, if any, and interest on the bonds and notes issued pursuant to 75-10-623 to become due in the next fiscal year, or as appropriate, to pay the redemption price of the bonds or notes.

(b) Money in the CERCLA cost recovery account, including interest on the money in the account, that is not transferred to the CERCLA match debt service fund must be retained in the CERCLA cost recovery account as long as any principal of, premium, if any, or interest on the CERCLA bonds or notes authorized in 75-10-623, the proceeds of which were applied, in whole or in part, to costs associated with the cost recovery, remains unpaid or the payment of the costs associated with cost recovery has not been provided for in a manner that would cause the defeasance of bonds.

**Section 6. Codification instruction.** [Section 5] is intended to be codified as an integral part of Title 75, chapter 10, part 6, and the provisions of Title 75, chapter 10, part 6, apply to [section 5].

**Section 7. Effective date.** [This act] is effective July 1, 2003.

Approved April 25, 2003

## CHAPTER NO. 497

[HB 12]

AN ACT DEFINING "ENERGY COST SAVINGS"; CLARIFYING DEBT SERVICE FOR APPROPRIATIONS OF ENERGY COST SAVINGS; AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS TO FUND THE STATE BUILDING ENERGY CONSERVATION PROGRAM AND CREATING A STATE DEBT; APPROVING ENERGY CONSERVATION PROJECTS FOR FISCAL YEARS 2004 AND 2005; APPROPRIATING BOND PROCEEDS TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; PLEDGING THE CREDIT OF THE STATE OF MONTANA TO SECURE THE BONDS TO BE ISSUED; AMENDING SECTIONS 90-4-602 AND 90-4-614, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 90-4-602, MCA, is amended to read:

**"90-4-602. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

- (1) "Board" means the board of examiners provided for in 2-15-1007.
- (2) "Cost" includes the expenses related to planning, design, construction, and installation of energy conservation improvements and any administrative expenses of the department incurred in the performance of its duties under the energy conservation program.
- (3) "Department" means the department of environmental quality provided for in 2-15-3501.
- (4) "Energy conservation program" means a program for the financing, acquisition, construction, and installation of energy saving equipment, systems, and improvements in state-owned buildings, structures, and facilities.

(5) "Energy conservation program bonds" includes all series of bonds issued to finance any portion of the energy conservation program.

(6) "*Energy cost savings*" means the savings in utility costs to a state agency as a result of an energy conservation program.

~~(6)~~(7) "State agency" means:

(a) each executive, legislative, or judicial branch department, office, or agency; and

(b) the university system."

**Section 2.** Section 90-4-614, MCA, is amended to read:

**"90-4-614. Appropriation of energy cost savings.** (1) In preparing the executive budget each biennium, the governor shall include for each state agency participating in the state energy conservation program:

(a) an estimate of the energy cost savings expected for that agency in each year of the biennium; and

(b) a projection of the debt service on energy conservation program bonds that should be apportioned to that agency in each year of the biennium. *Debt service is zero after the term of bond repayment.*

(2) Each session, the legislature shall review the governor's submission pursuant to 90-4-606 and subsection (1) of this section and appropriate in the general appropriations act the following:

(a) authority for each participating state agency to transfer funds in an amount equal to the agency's projected debt service to the energy conservation program account established in 90-4-612; and

(b) authority for each participating state agency to transfer funds to the long-range building program fund in an amount equal to the difference between the estimated energy cost savings to the agency and the projected debt service apportioned to that agency.

(3) The current level utility appropriations of state agencies participating in the energy conservation program must be reduced by the sum of the amounts appropriated in subsections (2)(a) and (2)(b).

(4) Each participating state agency shall transfer upon request of the department the amounts appropriated in accordance with subsection (2)."

**Section 3. Appropriation of bond proceeds.** There is appropriated from bond proceeds authorized by Chapter 50, Laws of 1999, Chapter 240, Laws of 2001, and [section 5] \$400,000 to the department of environmental quality to fulfill its duties under 90-4-605 and 90-4-607. This appropriation is a biennial appropriation.

**Section 4. Approval of energy conservation projects — definition.**

(1) Pursuant to Title 90, chapter 4, part 6, the legislature approves for fiscal years 2004 and 2005 the following energy conservation projects:

(a) Mitchell building, department of administration, Helena, Montana;

(b) Spratt building, department of public health and human services, Warm Springs, Montana;

(c) health science building, University of Montana-Missoula, Montana;

(d) Montana mental health and nursing care center, department of public health and human services, Lewistown, Montana;

(e) men's prison, department of corrections, Deer Lodge, Montana; and

(f) Kalispell and Missoula headquarters buildings, department of fish, wildlife, and parks.

(2) In addition to the energy conservation projects referred to in subsection (1), the department of environmental quality may expend funds appropriated under [section 3] to respond to energy savings opportunities. Energy savings opportunities include coordination of energy improvement projects with the long-range building program capital improvement projects.

(3) For purposes of this section, an "energy savings opportunity" means an opportunity to improve energy use that will provide significant energy and cost savings to the state and that will be technically infeasible or uneconomical if the department of environmental quality is delayed in providing the necessary funds until specific legislative approval can be obtained.

(4) If the costs of the projects authorized in subsections (1) and (2) are substantially below the bond amount authorized in [section 5], the department of environmental quality may fund projects that would be proposed as part of the state building energy conservation package for fiscal years 2006 and 2007.

**Section 5. Bond authorization.** (1) The board of examiners may, pursuant to 90-4-611, issue and sell bonds of the state in an aggregate principal amount not to exceed \$2.5 million for fiscal years 2004 and 2005 for the projects approved in [section 4] and to fulfill the duties imposed by 90-4-605 and 90-4-607, as provided in [section 3]. The bonds are general obligations for which the full faith and credit and taxing powers of the state are pledged for payment of the principal and interest on the bonds. The bonds must be issued as provided by Title 17, chapter 5, part 8.

(2) The proceeds of the bonds, other than any premiums and accrued interest received, must be deposited in the energy conservation program account established by 90-4-612. Premiums and accrued interest must be deposited in the debt service fund established in 17-2-102. Proceeds of bonds deposited in the energy conservation program account may be used to pay the costs of issuing the bonds, to fulfill the duties authorized by 90-4-605 and 90-4-607, and to fund the projects approved in [section 4]. For the purposes of 17-5-803 and 17-5-804, the energy conservation program account constitutes a capital projects account. The bond proceeds must be available to the department of environmental quality and may be used for the purposes authorized in this section without further budgetary authorization.

**Section 6. Two-thirds vote required.** Because [section 5] authorizes the creation of state debt, Article VIII, section 8, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for enactment of [section 5].

**Section 7. Effective date.** [This act] is effective July 1, 2003.

Approved April 24, 2003

## CHAPTER NO. 498

[HB 18]

AN ACT INCREASING THE USER SURCHARGE FOR COURT INFORMATION TECHNOLOGY; MAKING PERMANENT THE USER

SURCHARGE AND THE ACCOUNT ESTABLISHED FOR COURT INFORMATION TECHNOLOGY; AMENDING SECTION 3-1-317, MCA, SECTION 4, CHAPTER 361, LAWS OF 1995, AND SECTION 1, CHAPTER 71, LAWS OF 1999; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

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

**Section 1.** Section 3-1-317, MCA, is amended to read:

**“3-1-317. (Temporary) User surcharge for court information technology — exception.** (1) Except as provided in subsection (2), all courts of original jurisdiction shall impose:

(a) on a defendant in criminal cases, a ~~5~~ \$10 user surcharge upon conviction for any conduct made criminal by state statute or upon forfeiture of bond or bail;

(b) on the initiating party in civil and probate cases, a ~~5~~ \$10 user surcharge at the commencement of each action, proceeding, or filing; and

(c) on each defendant or respondent in civil cases, a ~~5~~ \$10 user surcharge upon appearance.

(2) If a court determines that a defendant in a criminal case or determines pursuant to 25-10-404 that a party in a civil case is unable to pay the surcharge, the court may waive payment of the surcharge imposed by this section.

(3) The surcharge imposed by this section is not a fee or fine and must be imposed in addition to other taxable court costs, fees, or fines. The surcharge may not be used in determining the jurisdiction of any court.

(4) The amounts collected under this section must be forwarded to the department of revenue for deposit in the account established in 3-5-904 for state funding of court information technology. ~~(Terminates June 30, 2003 — sec. 1, Ch. 71, L. 1999.)~~

**Section 2.** Section 4, Chapter 361, Laws of 1995, is amended to read:

**“Section 4. Effective date — termination date.** (1) [This act] is effective July 1, 1995.

~~(2) [This act] terminates June 30, 1999.”~~

**Section 3.** Section 1, Chapter 71, Laws of 1999, is amended to read:

**“Section 1.** Section 4, Chapter 361, Laws of 1995, is amended to read:

**“Section 4. Effective date — termination date.** (1) [This act] is effective July 1, 1995.

~~(2) [This act] terminates June 30, 1999-2003.”~~

**Section 4. Effective date.** [This act] is effective June 28, 2003.

**Section 5. Termination.** [This act] terminates June 30, 2005.

Approved April 25, 2003

## CHAPTER NO. 499

[HB 100]

AN ACT GENERALLY REVISING THE LAWS RELATING TO GAME BIRDS AND SHOOTING PRESERVES; REVISING THE GENERAL DEFINITION

OF "UPLAND GAME BIRDS" BY REMOVING QUAIL AND SPECIFYING RING-NECKED PHEASANTS; CONFORMING THE DEFINITION OF "GAME BIRDS" IN THE GAME BIRD FARM STATUTES TO THE GENERAL DEFINITION OF "UPLAND GAME BIRDS"; PROVIDING THAT POSSESSION, TRANSPORTATION, SALE, OR PURCHASE OF CAPTIVE-REARED MIGRATORY WATERFOWL IS NOT PROHIBITED; CONFORMING THE LAW GOVERNING VIOLATION OF CLOSED SEASON ON CERTAIN GAME BIRDS TO THE DEFINITION OF "UPLAND GAME BIRDS"; REVISING THE FEES FOR SHOOTING PRESERVE LICENSES; REVISING THE KINDS OF BIRDS THAT MAY BE HUNTED IN SHOOTING PRESERVES; ESTABLISHING MINIMUM AGE, NUMBER, AND MARKING REQUIREMENTS FOR RELEASED BIRDS; AUTHORIZING THE DEPARTMENT TO IMPOSE RESTRICTIONS ON NEW SHOOTING PRESERVE LICENSES; REVISING REGISTRATION BOOK REQUIREMENTS FOR SHOOTING PRESERVE OPERATORS; AMENDING SECTIONS 87-2-101, 87-3-111, 87-3-402, 87-4-503, 87-4-522, 87-4-524, 87-4-526, AND 87-4-901, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 87-2-101, MCA, is amended to read:

**"87-2-101. Definitions.** As used in ~~this chapter, chapter 3, and 87-1-102, chapter 3, and this chapter~~, unless the context clearly indicates otherwise, the following definitions apply:

- (1) "Angling" or "fishing" means to take or the act of a person possessing any instrument, article, or substance for the purpose of taking fish in any location that a fish might inhabit.
- (2) (a) "Bait" means any animal matter, vegetable matter, or natural or artificial scent placed in an area inhabited by wildlife for the purpose of attracting game animals or game birds.
  - (b) The term does not include:
    - (i) decoys, silhouettes, or other replicas of wildlife body forms;
    - (ii) scents used only to mask human odor; or
    - (iii) types of scents that are approved by the commission for attracting game animals or game birds.
- (3) "Closed season" means the time during which game birds, fish, and game and fur-bearing animals may not be lawfully taken.
- (4) "Commission" means the state fish, wildlife, and parks commission.
- (5) "Fur-bearing animals" means marten or sable, otter, muskrat, fisher, mink, bobcat, lynx, wolverine, northern swift fox, and beaver.
- (6) "Game animals" means deer, elk, moose, antelope, caribou, mountain sheep, mountain goat, mountain lion, bear, and wild buffalo.
- (7) "Game fish" means all species of the family salmonidae (chars, trout, salmon, grayling, and whitefish); all species of the genus stizostedion (sandpike or sauger and walleyed pike or yellowpike perch); all species of the genus esox (northern pike, pickerel, and muskellunge); all species of the genus micropterus (bass); all species of the genus polyodon (paddlefish); all species of the family acipenseridae (sturgeon); all species of the genus lota (burbot or ling); and the species ictalurus punctatus (channel catfish).

(8) "Hunt" means to pursue, shoot, wound, kill, chase, lure, possess, or capture or the act of a person possessing a weapon, as defined in 45-2-101, or using a dog or a bird of prey for the purpose of shooting, wounding, killing, possessing, or capturing wildlife protected by the laws of this state in any location that wildlife may inhabit, whether or not the wildlife is then or subsequently taken. The term includes an attempt to take by any means, including but not limited to pursuing, shooting, wounding, killing, chasing, luring, possessing, or capturing.

(9) "Migratory game birds" means waterfowl, including wild ducks, wild geese, brant, and swans; cranes, including little brown and sandhill; rails, including coots; wilson's snipes or jacksnipes; and mourning doves; ~~however, the open season on mourning doves is restricted to the open season on upland game birds as defined in subsection (15).~~

(10) "Nongame wildlife" means any wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean, or other animal not otherwise legally classified by statute or regulation of this state.

(11) "Open season" means the time during which game birds, fish, and game and fur-bearing animals may be lawfully taken.

(12) "Person" means individuals, associations, partnerships, and corporations.

(13) "Predatory animals" means coyote, weasel, skunk, and civet cat.

(14) "Trap" means to take or participate in the taking of any wildlife protected by the laws of the state by setting or placing any mechanical device, snare, deadfall, pit, or device intended to take wildlife or to remove wildlife from any of these devices.

(15) "Upland game birds" means sharptailed grouse, blue grouse, spruce (Franklin) grouse, prairie chicken, sage hen or sage grouse, ruffed grouse, ~~quail~~, ~~ring-necked~~ pheasant, Hungarian partridge, ptarmigan, wild turkey, and chukar partridge.

(16) "Wild buffalo" means buffalo or bison that have not been reduced to captivity."

**Section 2.** Section 87-3-111, MCA, is amended to read:

**"87-3-111. (Temporary) Unlawful to buy, sell, possess, or transport fish or game — exceptions — penalties.** (1) It is unlawful for a person to purchase, sell, offer to sell, possess, ship, or transport *all or part of* any game fish, *upland* game bird, migratory game bird, game animal, or fur-bearing animal ~~or part thereof that is~~ protected by the laws of this state, whether ~~belonging to the same or a different species from that native to the state taken in Montana or outside of Montana~~, except as specifically permitted by the laws of this state.

(2) The provisions of this section do not prohibit:

(a) the possession or transportation within the state of *all or part of* any legally taken fish, *upland* game bird, migratory game bird, game animal, or fur-bearing animal ~~or part thereof~~;

(b) the sale, purchase, or transportation of hides, heads, or mounts of lawfully killed *upland* game birds, *migratory game birds*, game fish, fur-bearing animals, or game animals, except that the sale or purchase of a hide, head, or mount of a grizzly bear is prohibited, except as provided in 87-3-110;

(c) the possession, transportation, sale, or purchase of naturally shed antlers or the antlers with a skull or portion of a skull attached from a game animal that has died from natural causes and that has not been unlawfully or accidentally killed;

(d) the possession, transportation, sale, or purchase of the bones of an elk, antelope, moose, or deer that has been lawfully killed or that has died of natural causes; ~~or~~

(e) the donation and sale of paddlefish roe as caviar under the provisions of 87-4-601.; *or*

(f) *the possession, transportation, sale or purchase of captive-reared migratory waterfowl.*

(3) It is unlawful for a person to possess or transport live fish away from the body of water in which the fish were taken, except:

(a) as provided in Title 87, chapter 4, part 6, or as specifically permitted in the laws of this state;

(b) for fish species approved by the commission for use as live bait and subject to any restrictions imposed by the commission; or

(c) within and along the boundaries of the eastern Montana fishing district, as established by the 1994-95 commission regulations.

(4) A person violating any of the provisions of this section is guilty of a misdemeanor and upon conviction shall be punished as provided in 87-1-102. (Terminates June 30, 2003—sec. 2, Ch. 196, L. 1993.)

**87-3-111. (Effective July 1, 2003) Unlawful to buy, sell, possess, or transport fish or game — exceptions — penalties.** (1) It is unlawful for a person to purchase, sell, offer to sell, possess, ship, or transport *all or part of* any game fish, *upland* game bird, migratory game bird, game animal, or fur-bearing animal ~~or part thereof~~ *that is* protected by the laws of this state, whether ~~belonging to the same or a different species from that native to the state taken in Montana or outside of Montana,~~ except as specifically permitted by the laws of this state.

(2) The provisions of this section do not prohibit:

(a) the possession or transportation within the state of *all or part of* any legally taken fish, *upland* game bird, migratory game bird, game animal, or fur-bearing animal ~~or part thereof~~;

(b) the sale, purchase, or transportation of hides, heads, or mounts of lawfully killed *upland* game birds, *migratory game birds*, game fish, fur-bearing animals, or game animals, except that the sale or purchase of a hide, head, or mount of a grizzly bear is prohibited, except as provided in 87-3-110;

(c) the possession, transportation, sale, or purchase of naturally shed antlers or the antlers with a skull or portion of a skull attached from a game animal that has died from natural causes and that has not been unlawfully or accidentally killed; ~~or~~

(d) the possession, transportation, sale, or purchase of the bones of an elk or deer that has been lawfully killed or that has died of natural causes.; *or*

(e) *the possession, transportation, sale, or purchase of captive-reared migratory waterfowl.*

(3) It is unlawful for a person to possess or transport live fish away from the body of water in which the fish were taken, except:

(a) as provided in Title 87, chapter 4, part 6, or as specifically permitted in the laws of this state;

(b) for fish species approved by the commission for use as live bait and subject to any restrictions imposed by the commission; or

(c) within and along the boundaries of the eastern Montana fishing district, as established by the 1994-95 commission regulations.

(4) A person violating any of the provisions of this section is guilty of a misdemeanor and upon conviction shall be punished as provided in 87-1-102."

**Section 3.** Section 87-3-402, MCA, is amended to read:

**"87-3-402. Unlawful to violate closed season on certain game birds.**

It is unlawful for any person to hunt or attempt to hunt ~~any quail, Chinese or Mongolian pheasant (commonly called ring-necked pheasant), Hungarian partridge, chukar partridge, sage grouse, sharp-tailed grouse, blue grouse, fool hen, prairie chicken, ruffed grouse, ptarmigan, or wild turkey~~ *an upland game bird* until the commission provides an open season on ~~any quail, Chinese or Mongolian pheasant (commonly called ring-necked pheasant), Hungarian partridge, chukar partridge, sage grouse, sharp-tailed grouse, blue grouse, fool hen, prairie chicken, ruffed grouse, ptarmigan, or wild turkey~~ *that upland game bird. The open season on mourning doves is restricted to the open season on upland game birds.*"

**Section 4.** Section 87-4-503, MCA, is amended to read:

**"87-4-503. Fees.** Fees for shooting preserve licenses or permits ~~shall~~ *must* be ~~\$50 per \$100 for each year for the first 160~~ *320* acres of shooting preserve area, plus ~~\$40 \$20 per for each year for each additional 160 acres and any fraction of 160 acres~~ *160 acres or parts thereof.*"

**Section 5.** Section 87-4-522, MCA, is amended to read:

**"87-4-522. Game hunted in preserve.** (1) Game ~~which~~ *that* may be hunted under this part ~~shall~~ *must* be confined to artificially propagated ~~ring-necked pheasants with no color mutations, quail, chukar partridges, turkeys, Merriam's turkeys, Hungarian partridges, and such other species as the authorized by the department may add from time to time.~~

(2) A minimum ~~number of stock of 100 birds of each species to be hunted on a cumulative of all species authorized for an individual shooting preserve shall~~ *must* be released ~~each year on the licensed area during the shooting preserve season. The minimum number of stock of each species to be released shall be determined by the department before the commencement of the season.~~

(3) *Artificially propagated upland game birds released on a shooting preserve during the shooting preserve season must be at least 14 weeks of age and must be marked prior to release in a manner that distinguishes them from wild upland game birds.*"

**Section 6.** Section 87-4-524, MCA, is amended to read:

**"87-4-524. Preserve operators to establish shooting restrictions.** (1) Except for required compliance with the game recovery restriction provided in 87-4-523, shooting preserve operators *licensed prior to July 1, 2003,* may establish their own shooting limitations and restrictions on the age, sex, and number of each species that may be taken by each person.



(2) *The department may impose restrictions on a shooting preserve license issued after July 1, 2003, in an area that supports existing native upland game bird species if the department determines that the restrictions are necessary to protect native populations. The restrictions must be based on sound biological principles.*

**Section 7.** Section 87-4-526, MCA, is amended to read:

**~~87-4-526. Registration of shooters~~ *Shooting preserve records.*** (1) Each shooting preserve operator shall maintain a registration book listing:

- (a) the names, addresses, and ~~hunting license~~ *automated licensing system* numbers of all shooters;
- (b) the date on which ~~they~~ *the shooters* hunted;
- (c) the amount of game and the species taken; ~~and~~
- (d) the tag numbers affixed to each carcass; *and*
- (e) *the number of wild upland game birds that were taken and tagged.*

(2) An accurate record ~~likewise~~ must be maintained of the total number, by species, of game raised ~~and/or~~ or purchased and the date and number of all species released. These records ~~shall~~ *must* be open to inspection by a delegated representative of the department at any reasonable time and ~~shall~~ *must* be the basis upon which the game-recovery limits in 87-4-523 ~~shall~~ *must* be determined."

**Section 8.** Section 87-4-901, MCA, is amended to read:

**~~87-4-901. Definitions.~~** For purposes of this part, the following definitions apply:

(1) "Game bird farm" means an enclosed area upon which game birds may be kept for purposes of obtaining, rearing in captivity, keeping, and selling game birds or parts of game birds as authorized under this part.

(2) "Game birds" means all birds defined as *upland game birds* in 87-2-101, ~~except that the only pheasants included are ring-necked pheasants, and quail are not included.~~

**Section 9. Effective date.** [This act] is effective July 1, 2003.

Approved April 25, 2003

## CHAPTER NO. 500

[HB 577]

AN ACT PROVIDING THAT EIGHT OR MORE EMPLOYERS WITH A TOTAL OF MORE THAN 500 EMPLOYEES MAY APPLY TO THE INSURANCE COMMISSIONER TO ORGANIZE A RECIPROCAL INSURER FOR THE PURPOSE OF PROVIDING WORKERS' COMPENSATION COVERAGE FOR THEIR EMPLOYEES; AND AMENDING SECTION 33-5-201, MCA.

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

**Section 1.** Section 33-5-201, MCA, is amended to read:

**~~33-5-201. Organization of reciprocal insurer.~~** (1) (a) Twenty-five or more persons domiciled in this state may organize a domestic reciprocal insurer

and ~~make application~~ apply to the commissioner for a certificate of authority to transact insurance.

(b) *Eight or more employers with a total of more than 500 employees may organize a domestic reciprocal insurer and apply to the commissioner for a certificate of authority to transact insurance for the purpose of providing workers' compensation coverage for their employees.*

(2) The proposed attorney shall ~~fulfill the requirements of and shall execute and~~ file with the commissioner when applying for a certificate of authority a declaration setting forth:

- (a) the name of the insurer;
  - (b) the location of the insurer's principal office, which ~~shall~~ *must* be the same as that of the attorney and ~~shall~~ *must* be maintained within this state;
  - (c) the kinds of insurance proposed to be transacted, *which in the case of a reciprocal insurer organized pursuant to subsection (1)(b) may only be workers' compensation coverage for employees*;
  - (d) the names and addresses of the original subscribers;
  - (e) the designation and appointment of the proposed attorney and a copy of the power of attorney;
  - (f) the names and addresses of the officers and directors of the attorney, if a corporation, or its members, if a firm;
  - (g) the powers of the subscribers' advisory committee and the names and terms of office of the members ~~thereof~~ *of the committee*;
  - (h) that all ~~moneys~~ *money* paid to the reciprocal insurer ~~shall~~ *must*, after deducting ~~therefrom~~ any sum payable to the attorney, be held in the name of the insurer and for the purposes specified in the subscribers' agreement;
  - (i) a copy of the subscribers' agreement;
  - (j) a statement that each of the original subscribers has in good faith applied for insurance of a kind proposed to be transacted and that the insurer has received from each ~~such~~ subscriber the full premium or premium deposit required for the policy applied for, for a term of not less than 6 months at an adequate rate ~~theretofore~~ filed with and approved by the commissioner;
  - (k) a statement of the financial condition of the insurer, a schedule of its assets, and a statement that the surplus as required by 33-5-401 is on hand; and
  - (l) a copy of each policy, endorsement, and application form ~~it then proposes to~~ *proposed for issue or use*.
- (3) The declaration ~~shall~~ *must* be acknowledged by the attorney in the manner required for the acknowledgment of deeds."

Approved April 24, 2003

## CHAPTER NO. 501

[HB 588]

AN ACT RESTRICTING MIDTERM INCREASES IN RATES OR DECREASES IN COVERAGE ON CONTRACTS OF PROPERTY OR CASUALTY INSURANCE UNDER CERTAIN CIRCUMSTANCES; AND AMENDING SECTION 33-15-1101, MCA.

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

**Section 1.** Section 33-15-1101, MCA, is amended to read:

**“33-15-1101. Purpose — applicability.** (1) The purpose of this part is to protect the public with regard to insurance transactions that involve cancellation, renewal, nonrenewal, or premium increases on contracts of property or casualty insurance by:

- (a) regulating the grounds for midterm cancellation of an insurance policy;
- (b) *except as provided in [section 2]*, prohibiting midterm increases in premiums;
- (c) increasing the opportunity for insureds to shop for replacement or substitute insurance;
- (d) reducing the opportunity for breach of contract, misrepresentation by omission or untimely disclosure, and unfair discrimination among insureds; and
- (e) increasing the opportunity for insurance producers to compete freely.

(2) This part applies to those forms of insurance defined in 33-1-206 and 33-1-210, except to the extent they conflict with chapter 23 of this title.

(3) This part does not limit the activities that may constitute undefined unfair trade practices prohibited by 33-18-1003. The commissioner may apply other provisions of this code to insurance transactions involving cancellation, renewal, nonrenewal, or premium increases on contracts of property or casualty insurance. Policies may provide terms more favorable to insureds than are required by this part. The rights provided by this part are in addition to and do not prejudice any other rights that the insured may have under common law, statutes, or rules.”

**Section 2. Limitation on midterm premium increases.** (1) In any case involving property or casualty insurance that is subject to this part, if the insured has prepaid the premium for the insurance policy for a specified period, the insurer may not unilaterally increase the rate charged or decrease the coverage provided for the period for which the premium has been paid unless:

- (a) there is a change in risk during that period because of the addition or removal of persons or property that was included in the rate at last renewal;
- (b) the risk was misrepresented by the insured; or
- (c) the insured requests a policy change that increases the rate because of that specific request.

(2) This section does not prohibit the cancellation of a policy for any other reason permitted by the policy or by law during an initial policy period not to exceed 60 days.

**Section 3. Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 33, chapter 15, part 11, and the provisions of Title 33, chapter 15, part 11, apply to [section 2].

Approved April 25, 2003

**CHAPTER NO. 502**

[HB 735]

AN ACT REVISING THE JOB REGISTRY FOR STATE EMPLOYEES WHOSE POSITIONS ARE ELIMINATED AS A RESULT OF PRIVATIZATION, REORGANIZATION, OR REDUCTION IN FORCE; AMENDING SECTION 2-18-1203, MCA; AND PROVIDING AN 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 — job register — seniority preference.~~** (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) notice of announcements for jobs for which the employee may qualify that arise within the terminating agency or within state government. Notices must be provided by the state for a period of 1 year from the date of separation.~~

~~(b)(a) access to any job retraining and career development programs provided by the state through the Job Training Partnership Act service delivery areas dislocated worker programs under the Workforce Investment Act of 1988, 29 U.S.C. 2801, 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.~~

~~(c) inclusion in a special job register from which all agencies, except an agency attempting to hire for a position exempt under 2-18-103 or 2-18-104, shall attempt to hire employees prior to seeking applications from the general public. The employee must be listed in the job register according to the occupational categories in which the employee is qualified for employment. 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)(b), whichever is later.~~

~~(2) (a) An agency attempting to hire from the job register shall consider the employee's qualifications and length of state service. If two or more employees listed in the job register are equally qualified for a vacant position, the agency shall select the employee with the longest continuous state service.~~

~~(b) If there is not an employee listed on the job register who meets the job qualifications for the vacant position, the agency may hire a qualified external applicant or establish a training assignment, according to state policy.~~

~~(3)(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. Effective date.** [This act] is effective July 1, 2003.

Approved April 25, 2003

## CHAPTER NO. 503

[HB 741]

AN ACT STATUTORILY ESTABLISHING THE MONTANA CONSENSUS COUNCIL; ATTACHING THE COUNCIL TO THE DEPARTMENT OF ADMINISTRATION FOR ADMINISTRATIVE PURPOSES; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1. Montana consensus council — purpose — composition — administration — executive director.** (1) There is a Montana consensus council.

(2) The council shall promote fair, effective, and efficient processes for building agreement on natural resource and other public policy issues that are important to Montanans.

(3) (a) The council is governed by a board of directors who shall represent a diversity of viewpoints.

(b) The board shall act as a trustee on behalf of the citizens of Montana by:

(i) defining what benefits are provided by the council and for whom and at what cost they are provided;

(ii) setting broad policies to achieve the council's desired outcomes; and

(iii) monitoring the performance of the executive director's progress toward achieving the desired outcomes.

(4) The board consists of eight members appointed as follows:

(a) four members appointed by the governor;

(b) two members, one of whom is appointed by the president of the senate and the other by the speaker of the house of representatives; and

(c) two members, one of whom is appointed by the minority leader of the senate and the other by the minority leader of the house of representatives.

(5) All members shall serve 2-year terms.

(6) A vacancy on the board must be filled in the manner of the original appointment.

(7) The board shall employ an executive director and prescribe the executive director's salary and duties.

(8) The council is attached to the department of administration for administrative purposes only.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 2, chapter 15, part 10, and the provisions of Title 2, chapter 15, part 10, apply to [section 1].

**Section 3. Effective date.** [This act] is effective July 1, 2003.

Approved April 24, 2003

## CHAPTER NO. 504

[SB 95]

AN ACT GENERALLY REVISING THE LAWS RELATING TO CHILD ABUSE AND NEGLECT AND ADOPTION; PROVIDING THAT VOLUNTARY SURRENDER OF A CHILD SOLELY BECAUSE OF INABILITY TO ACCESS PUBLICLY FUNDED SERVICES IS NOT ABANDONMENT; REVISING DEFINITIONS; REVISING APPEAL PROVISIONS; PROVIDING 20 DAYS WITHIN FILING OF AN INITIAL PETITION FOR A SHOW CAUSE HEARING; PROVIDING FOR LONG-TERM CUSTODY AS A DISPOSITION; PROVIDING THAT A DISPOSITION THAT REQUIRES AN EXPENDITURE BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES MAY NOT BE MADE UNLESS THE COURT FINDS AFTER A HEARING THAT THE EXPENDITURE IS REASONABLE AND RESOURCES ARE AVAILABLE; PROVIDING EXCEPTIONS IF NECESSARY FOR THE FEDERAL INDIAN CHILD WELFARE ACT; PROVIDING FOR AN EXTENSION OF TIMEFRAMES AS AN ALLOWED STIPULATION; PROVIDING FOR PLACEMENT OF A CHILD WITH A NONCUSTODIAL PARENT WITH NO FURTHER DEPARTMENTAL OBLIGATION; PROVIDING THAT AGENCIES ALLOWED TO PLACE CHILDREN IN ADOPTION MUST BE LICENSED IN MONTANA; ALLOWING WAIVER OF A POSTPLACEMENT EVALUATION FOR ADOPTION BY AN EXTENDED FAMILY MEMBER; PROVIDING FOR RELEASE OF CERTAIN ADOPTION INFORMATION NECESSARY TO ASSIST AN ADOPTEE TO BECOME ENROLLED IN OR A MEMBER OF AN INDIAN TRIBE; PROVIDING FOR RELEASE OF HEALTH CARE INFORMATION IN CHILD ABUSE AND NEGLECT PROCEEDINGS; PROVIDING DEFINITIONS OF YOUTH RESIDENTIAL SERVICES; PROVIDING FOR LICENSURE OF KINSHIP FOSTER HOMES AND YOUTH SHELTER CARE FACILITIES; ELIMINATING THE REQUIREMENT FOR REVIEW FOLLOWING TERMINATION OF PARENTAL RIGHTS; AMENDING SECTIONS 41-3-101, 41-3-102, 41-3-103, 41-3-113, 41-3-205, 41-3-301, 41-3-422, 41-3-427, 41-3-432, 41-3-434, 41-3-437, 41-3-438, 41-3-442, 41-3-445, 41-3-604, 41-3-607, 41-3-609, 41-3-611, 41-3-1008, 42-1-103, 42-3-212, 42-6-102, 42-6-109, 50-16-535, 50-16-536, 50-16-603, 50-16-605, 52-2-115, 52-2-602, 52-2-603, 76-2-411, AND 76-2-412, MCA; AND REPEALING SECTION 41-3-610, MCA.

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

**Section 1.** Section 41-3-101, MCA, is amended to read:

**“41-3-101. Declaration of policy.** (1) It is the policy of the state of Montana to:

(a) ~~ensure that all youth are afforded an adequate physical and emotional environment to promote normal development~~ *provide for the protection of children whose health and welfare are or may be adversely affected and further threatened by the conduct of those responsible for the children's care and protection;*

~~(b) compel in proper cases the parent or guardian of a youth to perform the moral and legal duty owed to the youth;~~

~~(c)(b) achieve these purposes in a family environment and preserve the unity and welfare of the family whenever possible;~~

~~(d) preserve the unity and welfare of the family whenever possible;~~

~~(e)(c) ensure that there is no forced removal of a child from the family based solely on an unsubstantiated allegation of abuse or neglect unless the department has reasonable cause to suspect that the child is at imminent risk of harm;~~

~~(f)(d) recognize that a child is entitled to assert the child's constitutional rights;~~

~~(g)(e) ensure that all children have a right to a healthy and safe childhood in a nurturing permanent family or in the closest possible substitute placement;~~

~~(h) provide for the protection of children whose health and welfare are or may be adversely affected and further threatened by the conduct of those responsible for their care and protection;~~

~~(i) require a department social worker to interview the parents of a child to which a petition pertains, if they are reasonably available, before the state may file a petition for temporary investigative authority or a petition for immediate protection and emergency protective services and to require that a judge may not issue an order granting a petition, except an order for immediate protection of the youth, until the parents, if they are reasonably available, are given the opportunity to appear before the judge or have their statements, if any, presented to the judge for consideration before an order is granted; and~~

~~(j)(f) ensure that whenever removal of a child from the home is necessary, the child is entitled to maintain ethnic, cultural, and religious heritage whenever appropriate.~~

(2) It is intended that the mandatory reporting of abuse or endangerment cases by professional people and other community members to the appropriate authority will cause the protective services of the state to seek to prevent further abuses, protect and enhance the welfare of these children, and preserve family life whenever appropriate.

(3) In implementing this chapter, whenever it is necessary to remove a child from the child's home, the department shall, when it is in the best interests of the child, place the child with the child's noncustodial birth parent or with the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, when placement with the extended family is approved by the department, prior to placing the child in an alternative protective or residential facility. Prior to approving a placement, the department shall investigate whether anyone living in the home has been convicted of a crime involving serious harm to children.

(4) In implementing the policy of this section, the child's health and safety are of paramount concern."

**Section 2.** Section 41-3-102, MCA, is amended to read:

**"41-3-102. Definitions.** As used in this chapter, the following definitions apply:

(1) (a) "Abandon", "abandoned", and "abandonment" mean:

~~(a)(i)~~ leaving a child under circumstances that make reasonable the belief that the parent does not intend to resume care of the child in the future;

~~(b)(ii)~~ willfully surrendering physical custody for a period of 6 months and during that period not manifesting to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child;

~~(c)(iii)~~ that the parent is unknown and has been unknown for a period of 90 days and that reasonable efforts to identify and locate the parent have failed; or

~~(d)(iv)~~ the voluntary surrender, as defined in 40-6-402, by a parent of a newborn who is no more than 30 days old to an emergency services provider, as defined in 40-6-402.

*(b) The terms do not include the voluntary surrender of a child to the department solely because of parental inability to access publicly funded services.*

(2) "A person responsible for a child's welfare" means:

(a) the child's parent, guardian, foster parent or an adult who resides in the same home in which the child resides;

~~(b) a person providing care in a day-care facility;~~

*(b) a person providing care in a day-care facility;*

~~(c)(c)~~ an employee of a public or private residential institution, facility, home, or agency; or

~~(d)(d)~~ any other person responsible for the child's welfare in a residential setting.

(3) "Abused or neglected" means the state or condition of a child who has suffered child abuse or neglect.

(4) (a) "Adequate health care" means any medical care or nonmedical remedial health care recognized by an insurer licensed to provide disability insurance under Title 33, including the prevention of the withholding of medically indicated treatment or medically indicated psychological care permitted or authorized under state law.

(b) This chapter may not be construed to require or justify a finding of child abuse or neglect for the sole reason that a parent or legal guardian, due to religious beliefs, does not provide adequate health care for a child. However, this chapter may not be construed to limit the administrative or judicial authority of the state to ensure that medical care is provided to the child when there is imminent substantial risk of serious harm to the child.

(5) "Best interests of the child" means the physical, mental, and psychological conditions and needs of the child and any other factor considered by the court to be relevant to the child.

(6) "Child" or "youth" means any person under 18 years of age.

(7) (a) "Child abuse or neglect" means:

(i) actual *physical or psychological* harm to a ~~child's health or welfare~~ child;

(ii) substantial risk of *physical or psychological* harm to a ~~child's health or welfare~~ child; or

(iii) abandonment.



(b) The term includes actual *physical or psychological harm to a child* or substantial risk of *physical or psychological harm to a child* by the acts or omissions of a person responsible for the child's welfare.

(c) The term does not include self-defense, defense of others, or action taken to prevent the child from self-harm that does not constitute *physical or psychological harm to a child's health or welfare* child.

(8) "Concurrent planning" means to work toward reunification of the child with the family while at the same time developing and implementing an alternative permanent plan.

(9) "Department" means the department of public health and human services provided for in 2-15-2201.

(10) "Family group ~~conference~~ *decisionmaking meeting*" means a meeting that involves family members in either developing treatment plans or making placement decisions, or both.

~~(11) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other person responsible for the child's welfare:~~

~~(a) inflicts or allows to be inflicted upon the child physical abuse, physical neglect, or psychological abuse or neglect;~~

~~(b) commits or allows to be committed sexual abuse or exploitation of the child;~~

~~(c) induces or attempts to induce a child into giving untrue testimony that the child or another child was abused or neglected by a parent or person responsible for the child's welfare;~~

~~(d) causes malnutrition or failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered financial or other reasonable means to do so;~~

~~(e) exposes or allows the child to be exposed to an unreasonable risk to the child's health or welfare by failing to intervene or eliminate the risk; or~~

~~(f) abandons the child.~~

~~(12)~~ (11) "Limited emancipation" means a status conferred on a youth by a court in accordance with ~~41-3-438~~ 41-1-501 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older.

~~(13)~~ (12) "Parent" means a biological or adoptive parent or stepparent.

~~(14)~~ (13) "Parent-child legal relationship" means the legal relationship that exists between a child and the child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been terminated by competent judicial decree as provided in 40-6-234, Title 42, or part 6 of this chapter.

~~(15)~~ (14) "Permanent placement" means reunification of the child with the child's parent, adoption, placement with a legal guardian, placement with a fit and willing relative, or placement in another planned permanent living arrangement until the child reaches 18 years of age.

~~(16)~~ (15) "Physical abuse" means an intentional act, an intentional omission, or gross negligence resulting in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns, bone fractures, extreme

pain, permanent or temporary disfigurement, impairment of any bodily organ or function, or death.

~~(17)~~ (16) "Physical neglect" means either failure to provide basic necessities, including but not limited to appropriate and adequate nutrition, protective shelter from the elements, and appropriate clothing related to weather conditions, or failure to provide cleanliness and general supervision, or both, or exposing or allowing the child to be exposed to an unreasonable physical or psychological risk to the child.

(17) (a) "Physical or psychological harm to a child" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

(i) inflicts or allows to be inflicted upon the child physical abuse, physical neglect, or psychological abuse or neglect;

(ii) commits or allows sexual abuse or exploitation of the child;

(iii) induces or attempts to induce a child into giving untrue testimony that the child or another child was abused or neglected by a parent or other person responsible for the child's welfare;

(iv) causes malnutrition or a failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered financial or other reasonable means to do so;

(v) exposes or allows the child to be exposed to an unreasonable risk to the child's health or welfare by failing to intervene or eliminate the risk; or

(vi) abandons the child.

(b) The term does not include a youth not receiving supervision solely because of parental inability to control the youth's behavior.

(18) "Psychological abuse or neglect" means severe maltreatment through acts or omissions that are injurious to the child's emotional, intellectual, or psychological capacity to function, including acts of violence against another person residing in the child's home.

(19) "Reasonable cause to suspect" means cause that would lead a reasonable person to believe that child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known to the person.

(20) "Residential setting" means an out-of-home placement where the child typically resides for longer than 30 days for the purpose of receiving food, shelter, security, guidance, and, if necessary, treatment.

(21) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, sexual abuse, ritual abuse, or incest, as described in Title 45, chapter 5.

(b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area while attending to the sanitary or health care needs of that infant or toddler by a parent or other person responsible for the child's welfare.

(22) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625.

(23) "Social worker" means an employee of the department who, before the employee's field assignment, has been educated or trained in a program of social

work or a related field that includes cognitive and family systems treatment or who has equivalent verified experience or verified training in the investigation of child abuse, neglect, and endangerment. This definition does not apply to any provision of this code that is not in this chapter.

(24) "Treatment plan" means a written agreement between the department and the parent or guardian or a court order that includes action that must be taken to resolve the condition or conduct of the parent or guardian that resulted in the need for protective services for the child. The treatment plan may involve court services, the department, and other parties, if necessary, for protective services.

(25) "Unfounded" means that after an investigation, the investigating person has determined that the reported abuse, neglect, or exploitation has not occurred.

(26) (a) "Withholding of medically indicated treatment" means the failure to respond to an infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication, that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting the conditions.

(b) The term does not include the failure to provide treatment, other than appropriate nutrition, hydration, or medication, to an infant when, in the treating physician's or physicians' reasonable medical judgment:

(i) the infant is chronically and irreversibly comatose;

(ii) the provision of treatment would:

(A) merely prolong dying;

(B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

(C) otherwise be futile in terms of the survival of the infant; or

(iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane. For purposes of this subsection (26), "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children 1 year of age or older.

(27) "Youth in need of care" means a youth who has been adjudicated or determined, after a hearing, to be or to have been abused, neglected, or abandoned."

**Section 3.** Section 41-3-103, MCA, is amended to read:

**"41-3-103. Jurisdiction and venue.** (1) In all matters arising under this chapter, the district court has jurisdiction over:

(a) a youth who is within the state of Montana for any purpose;

(b) a youth or other person subject to this chapter who under a temporary or permanent order of the court has voluntarily or involuntarily left the state or the jurisdiction of the court; or

(c) a person who is alleged to have abused or neglected a youth who is in the state of Montana for any purpose.

(2) ~~The~~ *Either the county where a youth is located or a county where the youth's parent or guardian resides* has initial jurisdiction over a youth alleged to be a youth in need of care. ~~Venue may be transferred to the county of residence of the youth's parent or guardian.~~

**Section 4.** Section 41-3-113, MCA, is amended to read:

**"41-3-113. Appeals.** (1) Appeals of court orders or decrees made under this part ~~shall~~ *must* be given precedence on the calendar of the supreme court over all other matters, unless otherwise provided by law.

(2) An appeal does not stay the order or decree appealed from, ~~however, the~~ *and does not divest the presiding district court judge of jurisdiction to take steps that are necessary, in the best interests of the child, and in order to protect the health and safety of the child.* The supreme court may order a stay upon application and hearing if suitable provision is made for the care and custody of the child.

(3) *If the appeal results in the reversal of the order appealed, the legal status of the child reverts to the child's legal status before the entry of the order that was appealed. The child's prior legal status remains in effect until further order of the district court unless the supreme court orders otherwise."*

**Section 5.** 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 (6) and (7), 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, guardian, 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. 6042(a)(2)(B);

(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 ~~conference~~ *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 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 youth probation officer who is working in an official capacity with the child who is the subject of a report in the records;

(t) a county attorney, peace officer, or 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 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 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 court-appointed attorney, guardian ad litem, or special advocate.

(5) 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.

(6) 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 subsection (3)(a). However, this subsection may not be construed to compel a family member to keep the proceedings confidential.

(7) 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 (6) if the news organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the proceeding.

(8) 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.

(9) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this section that are provided to the parent, the guardian, or the parent or guardian's attorney must be provided without cost."

**Section 6.** Section 41-3-301, MCA, is amended to read:

**“41-3-301. Emergency protective service.** (1) Any child protective social worker of the department, a peace officer, or the county attorney who has reason to believe any youth is in immediate or apparent danger of harm may immediately remove the youth and place the youth in a protective facility. The department may make a request for further assistance from the law enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the parents, parent, guardian, or other person having legal physical custody of the youth at the time the placement is made or as soon after placement as possible. Notification under this subsection must include the reason for removal, information regarding the show cause hearing, and the purpose of the show cause hearing.

(2) A child who has been removed from the child’s home or any other place for the child’s protection or care may not be placed in a jail.

(3) An abuse and neglect petition must be filed within 2 working days, excluding weekends and holidays, of emergency placement of a child unless ~~arrangements acceptable to the agency for the care of the child have been made by the parents~~ *arrangements acceptable to the agency for the care of the child have been made by the parents.*

(4) ~~Except as provided in the federal Indian Child Welfare Act, if applicable, a show cause hearing must be held within 10 20 days, excluding weekends and holidays,~~ of the filing of the initial petition unless otherwise stipulated by the parties pursuant to 41-3-434.

*(5) If the department determines that a petition for immediate protection and emergency protective services must be filed to protect the safety of the child, the social worker shall interview the parents of the child to whom the petition pertains, if the parents are reasonably available, before the petition may be filed. The district court may immediately issue an order for immediate protection of the child. The district court may not order further relief until the parents, if they are reasonably available, are given the opportunity to appear before the court or have their statements, if any, presented to the court for consideration before entry of an order granting the petition.*

~~(4)(6)~~ The department shall make the necessary arrangements for the child’s well-being as are required prior to the court hearing.”

**Section 7.** 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;*

~~(iv)~~ (v) termination of the parent-child legal relationship, as provided in 41-3-607;

~~(v)~~ (vi) appointment of a guardian pursuant to 41-3-444;

~~(vi)~~ (vii) a determination that preservation or reunification services need not be provided; or

~~(vii)~~(viii) any combination of the provisions of subsections (1)(a)(i) through (1)(a)(vi) (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 an affidavit by the department alleging that the child appears to have been abused or neglected and stating the basis for the petition.

(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

~~(iii)~~(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 all petitions 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 by certified mail. 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 appoint an attorney to represent the unavailable party when, in the opinion of the court, the interests of justice require.

(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 must be given an opportunity 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) The court may at any time on its own motion or the motion of any party appoint counsel for any indigent party. If an indigent parent is not already represented by counsel, counsel must be appointed for an indigent parent at the time that a request is made for a determination that preservation or reunification services need not be provided.

(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 ~~conference~~ *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 to request the appointment of counsel if the person is indigent or if appointment 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) ~~Orders~~ *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 8.** Section 41-3-427, MCA, is amended to read:

**"41-3-427. Petition for immediate protection and emergency protective services — order — service.** (1) (a) In a case in which it appears that a child is abused or neglected or is in danger of being abused or neglected, the county attorney, the attorney general, or an attorney hired by the county may file a petition for immediate protection and emergency protective services. In implementing the policy of this section, the child's health and safety are of paramount concern.

(b) A petition for immediate protection and emergency protective services must state the specific authority requested and the facts establishing probable cause that a child is abused or neglected or is in danger of being abused or neglected.

(c) The petition for immediate protection and emergency protective services must be supported by an affidavit signed by a representative of the department stating in detail the facts upon which the request is based. The petition or affidavit of the department must contain information regarding statements, if any, made by the parents detailing the parents' statement of the facts of the case. The parents, if available in person or by electronic means, must be given an opportunity to present evidence to the court before the court rules on the petition.

(2) The person filing the petition for immediate protection and emergency protective services has the burden of presenting evidence establishing probable cause for the issuance of an order for immediate protection of the child, except as

provided by the federal Indian Child Welfare Act, if applicable. The court shall consider the parents' statements, if any, included with the petition and any accompanying affidavit or report to the court. If the court finds probable cause, the court may issue an order granting the following forms of relief, which do not constitute a court-ordered treatment plan under 41-3-443:

- (a) the right of entry by a peace officer or department worker;
- (b) the right to place the child in temporary medical or out-of-home care, including but not limited to care provided by a noncustodial parent, kinship or foster family, group home, or institution;
- (c) a requirement that the parents, guardian, or other person having physical or legal custody furnish information that the court may designate and obtain evaluations that may be necessary to determine whether a child is a youth in need of care;
- (d) a requirement that the perpetrator of the alleged child abuse or neglect be removed from the home to allow the child to remain in the home;
- (e) a requirement that the parent provide the department with the name and address of the other parent, if known, unless parental rights to the child have been terminated;
- (f) a requirement that the parent provide the department with the names and addresses of extended family members who may be considered as placement options for the child who is the subject of the proceeding; and
- (g) any other temporary disposition that may be required in the best interests of the child that does not require an expenditure of money by the department unless ~~the department is notified and a court hearing is set in a timely manner on the proposed expenditure~~ *the court finds after notice and a hearing that the expenditure is 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.

(3) An order for removal of a child from the home must include a finding that continued residence of the child with the parent is contrary to the welfare of the child or that an out-of-home placement is in the best interests of the child.

(4) The order for immediate protection of the child must require the person served to comply immediately with the terms of the order and to appear before the court issuing the order on the date specified for a show cause hearing. Upon a failure to comply or show cause, the court may hold the person in contempt or place temporary physical custody of the child with the department until further order.

(5) The petition must be served as provided in 41-3-422."

**Section 9.** Section 41-3-432, MCA, is amended to read:

**"41-3-432. Show cause hearing — order.** (1) (a) ~~Except as provided in the federal Indian Child Welfare Act, a show cause hearing must be conducted within 10 20 days, excluding weekends and holidays,~~ of the filing of an initial child abuse and neglect petition unless otherwise stipulated by the parties pursuant to 41-3-434 or unless an extension of time is granted by the court.

(b) The court may grant an extension of time for a show cause hearing only upon a showing of substantial injustice and shall order an appropriate remedy that considers the best interests of the child.

(2) The person filing the petition has the burden of presenting evidence establishing probable cause for the issuance of an order for temporary investigative authority after the show cause hearing, except as provided by the federal Indian Child Welfare Act, if applicable.

(3) At the show cause hearing, the court may consider all evidence and shall provide an opportunity for a parent, guardian, or other person having physical or legal custody of the child to provide testimony. Hearsay evidence of statements made by the affected child is admissible at the hearing. The parent, guardian, or other person may be represented by legal counsel. The court may permit testimony by telephone, audiovisual means, or other electronic means.

(4) At the show cause hearing, the court shall explain the procedures to be followed in the case and explain the parties' rights, including the right to request appointment of counsel if indigent or if appointment of counsel is required under the federal Indian Child Welfare Act, if applicable, and the right to challenge the allegations contained in the petition. The parent, guardian, or other person having physical or legal custody of the child must be given the opportunity to admit or deny the allegations contained in the petition at the show cause hearing. Inquiry must be made to determine whether the notice requirements of the federal Indian Child Welfare Act, if applicable, have been met.

(5) The court shall make written findings on issues including but not limited to the following:

(a) whether the child should be returned home immediately if there has been an emergency removal or remain in temporary out-of-home care or be removed from the home;

(b) if removal is ordered or continuation of removal is ordered, why continuation of the child in the home would be contrary to the child's best interests and welfare;

(c) whether the department has made reasonable efforts to avoid protective placement of the child or to make it possible to safely return the child to the child's home;

(d) financial support of the child, including inquiry into the financial ability of the parents, guardian, or other person having physical or legal custody of the child to contribute to the costs for the care, custody, and treatment of the child and requirements of a contribution for those costs pursuant to 41-3-446; and

(e) whether another hearing is needed and, if so, the date and time of the next hearing.

(6) The court may consider:

(a) terms and conditions for parental visitation; and

(b) whether orders for examinations, evaluations, counseling, immediate services, or protection are needed.

(7) Following the show cause hearing, the court may enter an order for the relief requested or amend a previous order for immediate protection of the child if one has been entered. The order must be in writing.

(8) If a child who has been removed from the child's home is not returned home after the show cause hearing or if removal is ordered, the parents or parent, guardian, or other person or agency having physical or legal custody of the child named in the petition may request that a citizen review board, if available pursuant to part 10 of this chapter, review the case within 30 days of

the show cause hearing and make a recommendation to the district court, as provided in 41-3-1010.

(9) Adjudication of a child as a youth in need of care may be made at the show cause hearing if the requirements of 41-3-437(2) are met. If not made at the show cause hearing, adjudication under 41-3-437 must be made within the time limits required by 41-3-437 unless adjudication occurs earlier by stipulation of the parties pursuant to 41-3-434 and order of the court."

**Section 10.** Section 41-3-434, MCA, is amended to read:

**"41-3-434. Stipulations.** Subject to approval by the court, ~~a parent~~ *the parties* may stipulate to any of the following:

- (1) the child meets the definition of a youth in need of care by the preponderance of the evidence;
- (2) a treatment plan, if the child has been adjudicated a youth in need of care; ~~or~~
- (3) the disposition; *or*
- (4) *extension of the timeframes contained in this chapter, except for the timeframe contained in 41-3-445."*

**Section 11.** Section 41-3-437, MCA, is amended to read:

**"41-3-437. Adjudication — temporary disposition — findings — order.** (1) Upon the filing of an appropriate petition, an adjudicatory hearing must be held within 90 days of a show cause hearing under 41-3-432. Adjudication may take place at the show cause hearing if the requirements of subsection (2) are met or may be made by prior stipulation of the parties pursuant to 41-3-434 and order of the court. Exceptions to the time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays ~~in the notification of parties~~, *stipulation by the parties pursuant to 41-3-434*, and unforeseen personal emergencies.

(2) The court may make an adjudication on a petition under 41-3-422 if the court determines by a preponderance of the evidence, except as provided in the federal Indian Child Welfare Act, if applicable, that the child is a youth in need of care ~~and ascertains, as far as possible, the cause~~. Except as otherwise provided in this part, the Montana Rules of Civil Procedure and the Montana Rules of Evidence apply to adjudication and to an adjudicatory hearing. Adjudication must determine the nature of the abuse and neglect and establish facts that resulted in state intervention and upon which disposition, case work, court review, and possible termination are based.

(3) The court shall hear evidence regarding the residence of the child, paternity, if in question, the whereabouts of the parents, guardian, or nearest adult relative, and any other matters the court considers relevant in determining the status of the child. Hearsay evidence of statements made by the *affected* youth is admissible ~~according to the Montana Rules of Evidence~~ *according to the Montana Rules of Evidence*.

(4) In a case in which abandonment has been alleged by the county attorney, the attorney general, or an attorney hired by the county, the court shall hear offered evidence, including evidence offered by a person appearing pursuant to 41-3-422(9)(a) or (9)(b), regarding any of the following subjects:

- (a) the extent to which the child has been cared for, nurtured, or supported by a person other than the child's parents; and

(b) whether the child was placed or allowed to remain by the parents with another person for the care of the child, and, if so, then the court shall accept evidence regarding:

(i) the intent of the parents in placing the child or allowing the child to remain with that person; and

(ii) the circumstances under which the child was placed or allowed to remain with that other person, including:

(A) whether a parent requesting return of the child was previously prevented from doing so as a result of an order issued pursuant to Title 40, chapter 15, part 2, or of a conviction pursuant to 45-5-206; and

(B) whether the child was originally placed with the other person to allow the parent to seek employment or attend school.

(5) In all civil and criminal proceedings relating to abuse or neglect, the privileges related to the examination or treatment of the child do not apply, except the attorney-client privilege granted by 26-1-803 and the mediation privilege granted by 26-1-813.

(6) (a) If the court determines that the child is not an abused or neglected child, the petition must be dismissed and any order made pursuant to 41-3-427 or 41-3-432 must be vacated.

(b) If the child is adjudicated a youth in need of care, the court shall set a date for a dispositional hearing to be conducted within 20 days, as provided in 41-3-438(2), and order any necessary or required investigations. The court may issue a temporary dispositional order pending the dispositional hearing. The temporary dispositional order may provide for any of the forms of relief listed in 41-3-427(2).

(7) (a) Before making an adjudication, the court ~~shall~~ *may* make ~~written~~ *oral* findings, and following the adjudicatory hearing, the court shall make written findings on issues, including but not limited to the following:

(i) which allegations of the petition have been proved or admitted, if any;

(ii) whether there is a legal basis for continued court and department intervention; and

(iii) whether the department has made reasonable efforts to avoid protective placement of the child or to make it possible to safely return the child to the child's home.

(b) The court may order:

(i) terms for visitation, support, and other intrafamily communication pending disposition if the child is to be placed or to remain in temporary out-of-home care prior to disposition;

(ii) examinations, evaluations, or counseling of the child or parents in preparation for the disposition hearing *that does not require an expenditure of money by the department unless the court finds after notice and a hearing that the expenditure is 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;*

(iii) the department to evaluate the noncustodial parent or relatives as possible caretakers, if not already done;

(iv) the perpetrator of the alleged child abuse or neglect to be removed from the home to allow the child to remain in the home; and

(v) the department to continue efforts to notify noncustodial parents.”

**Section 12.** Section 41-3-438, MCA, is amended to read:

**“41-3-438. Disposition — hearing — order.** (1) Unless a petition is dismissed or unless otherwise stipulated by the parties pursuant to 41-3-434 or ordered by the court, a dispositional hearing must be held on every petition filed under this chapter within 20 days after an adjudicatory order has been entered under 41-3-437. Exceptions to the time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays ~~in the notification of parties, stipulation by the parties pursuant to 41-3-434,~~ and unforeseen personal emergencies.

(2) (a) A dispositional order must be made after a dispositional hearing that is separate from the adjudicatory hearing under 41-3-437. The hearing process must be scheduled and structured so that dispositional issues are specifically addressed apart from adjudicatory issues. Hearsay evidence is admissible at the dispositional hearing.

(b) A dispositional hearing may follow an adjudicatory hearing in a bifurcated manner immediately after the adjudicatory phase of the proceedings if:

(i) all required reports are available and have been received by all parties or their attorneys at least 5 working days in advance of the hearing; and

(ii) the judge has an opportunity to review the reports after the adjudication.

(c) *The dispositional hearing may be held prior to the entry of written findings required by 41-3-437.*

(3) If a child is found to be a youth in need of care under 41-3-437, the court may enter its judgment, making any of the following dispositions to protect the welfare of the child:

(a) permit the child to remain with the child’s *custodial* parent or guardian, subject to those conditions and limitations the court may prescribe;

(b) *order the placement of the child with the noncustodial parent, superseding any existing custodial order, and dismiss the proceeding with no further obligation on the part of the department to provide services to the parent with whom the child is placed or to work toward reunification of the child with the parent or guardian from whom the child was removed in the initial proceeding;*

~~(b)~~(c) grant an order of limited emancipation to a child who is 16 years of age or older, as provided in 41-1-501;

~~(c)~~(d) transfer temporary legal custody to any of the following:

(i) the department;

(ii) a licensed child-placing agency that is willing and able to assume responsibility for the education, care, and maintenance of the child and that is licensed or otherwise authorized by law to receive and provide care of the child; or

(iii) a relative or other individual who is recommended by the department or a licensed child-placing agency designated by the court and who is found by the court to be qualified to receive and care for the child;

~~(d)~~(e) order a party to the action to do what is necessary to give effect to the final disposition, including undertaking medical and psychological evaluations, treatment, and counseling that does not require an expenditure of money by the department unless the department consents and informs the court that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

~~(e)~~(f) order further care and treatment as the court considers in the best interests of the child that does not require an expenditure of money by the department unless the department consents and informs the court that resources are available for the proposed care and treatment. The department is the payor of last resort after all family, insurance, and other resources have been examined pursuant to 41-3-446.

(4) (a) If the court awards temporary legal custody of an abandoned child other than to the department or to a noncustodial parent, the court shall award temporary legal custody of the child to a member of the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, if:

(i) placement of the abandoned child with the extended family member is in the best interests of the child;

(ii) the extended family member requests that the child be placed with the family member; and

(iii) the extended family member is found by the court to be qualified to receive and care for the child.

(b) If more than one extended family member satisfies the requirements of subsection (4)(a), the court may award custody to the extended family member who can best meet the child's needs.

(5) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with permanency for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with a permanent plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(6) If the court finds that reasonable efforts are not necessary pursuant to 41-3-442(1) or subsection (5) of this section, a permanency plan hearing must be held within 30 days of that determination and reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(7) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child."

**Section 13.** Section 41-3-442, MCA, is amended to read:

**"41-3-442. Temporary legal custody.** (1) If a child is found to be a youth in need of care under 41-3-437, the court may grant temporary legal custody under 41-3-438 if the court determines by a preponderance of the evidence that:

(a) dismissing the petition would create a substantial risk of harm to the child or would be a detriment to the child's physical or psychological well-being; and



(b) unless there is a finding that reasonable efforts are not required pursuant to 41-3-423, reasonable services have been provided to the parent or guardian to prevent the removal of the child from the home or to make it possible for the child to safely return home.

(2) An order for temporary legal custody may be in effect for no longer than 6 months.

(3) *The granting of temporary legal custody to the department allows the department to place a child in care provided by a custodial or noncustodial parent, kinship foster home, youth foster home, youth group home, youth shelter care facility, or institution.*

(4) Before the expiration of the order for temporary legal custody, the county attorney, the attorney general, or an attorney hired by the county shall petition for one of the following:

(a) an extension of temporary legal custody, ~~not to exceed a total of 6 months,~~ *not to exceed 6 months*, upon a showing that:

(i) additional time is necessary for the parent or guardian to successfully complete a treatment plan; *or*

(ii) *continuation of temporary legal custody is necessary because of the child's individual circumstances;*

(b) termination of the parent-child legal relationship and either:

(i) permanent legal custody with the right of adoption; *or*

(ii) appointment of a guardian pursuant to 41-3-607;

(c) *long-term custody when the child is in a planned alternative permanent placement living arrangement* pursuant to 41-3-445;

(d) appointment of a guardian pursuant to 41-3-444; *or*

(e) dismissal.

~~(5)~~(5) The court may continue an order for temporary legal custody pending a hearing on a petition provided for in subsection (2).

~~(4)~~(6) If an extension of temporary legal custody is granted to the department, the court shall state the reasons why the child was not returned home and the conditions upon which the child may be returned home and shall specifically find that an extension is in the child's best interests.

~~(5)~~(7) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child.

~~(6)~~(8) In implementing the policy of this section, the child's health and safety are of paramount concern.

~~(7)~~(9) A petition requesting temporary legal custody must be served as provided in 41-3-422."

**Section 14.** Section 41-3-445, MCA, is amended to read:

**"41-3-445. Permanency plan hearing.** (1) (a) (i) Subject to subsection (1)(b), a permanency plan hearing must be held by the court:

(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); and

(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 shall *conduct a hearing and* make a finding whether the department has made reasonable efforts to finalize the permanency plan for the child.

(b) A permanency plan hearing is not required if the proceeding has been dismissed, the child was not removed from the home, or the child has been returned to the child's parent or guardian.

(c) The permanency plan hearing may be combined with a hearing that is required in other sections of this part if held within the time limits of that section. If a permanency plan hearing is combined with another hearing, the requirements of the court related to the disposition of the other hearing must be met in addition to the requirements of this section.

(2) At least 3 working days prior to the permanency plan hearing, the department and the guardian ad litem shall each submit a report regarding the child to the court 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 plan hearing, an attorney or advocate for a parent or guardian may submit an informational report to the court for review.

(4) The court's order must be issued within a reasonable time after the permanency plan hearing. The court shall make findings on whether the permanency plan is in the best interests of the child and whether the department has made reasonable efforts to finalize the plan. The court shall order the department to take whatever additional steps are necessary to effectuate the terms of the plan.

(5) 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 (6) and that does not require an expenditure of money by the department unless ~~the department is notified and a court hearing is set in a timely manner on the proposed expenditure~~ *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.

(6) Permanency options include:

(a) reunification of the child with the child's parent or guardian;

(b) adoption;

(c) appointment of a guardian pursuant to 41-3-444; or

(d) *long-term custody if the child is in a planned permanent living arrangement* ~~for a child if the evidence demonstrates established~~ *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 child's best interests; 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.
- (7) 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."

**Section 15.** 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 a ~~planned permanent living arrangement~~ *long-term custody* pursuant to 41-3-445, or a petition to dismiss must be filed.”

**Section 16.** Section 41-3-607, MCA, is amended to read:

**“41-3-607. Petition for termination — separate hearing — right to counsel — no jury trial.** (1) The termination of a parent-child legal relationship may be considered only after the filing of a petition pursuant to 41-3-422 alleging the factual grounds for termination pursuant to 41-3-609.

(2) If termination of a parent-child legal relationship is ordered, the court may:

(a) transfer permanent legal custody of the child, with the right to consent to the child’s adoption, to:

(i) the department;

(ii) a licensed child-placing agency; or

(iii) another individual who has been approved by the department and has received consent for the transfer of custody from the department or agency that has custody of the child; or

(b) transfer permanent legal custody of the child to the department with the right to petition for appointment of a guardian pursuant to 41-3-444.

(3) *If the court does not order termination of the parent-child legal relationship, the child’s prior legal status remains in effect until further order of the court.*

~~(2)~~(4) At the time that a petition for termination of a parent-child relationship is filed, parents must be advised of the right to counsel, and counsel must be appointed for an indigent party.

~~(3)~~(5) A guardian ad litem must be appointed to represent the child’s best interests in any hearing determining the involuntary termination of the parent-child legal relationship. The guardian ad litem shall continue to represent the child until the child is returned home or placed in an appropriate permanent placement. If a respondent parent is a minor, a guardian ad litem must be appointed to serve the minor parent in addition to any counsel requested by the parent.

~~(4)~~(6) There is no right to a jury trial at proceedings held to consider the termination of a parent-child legal relationship.”

**Section 17.** Section 41-3-609, MCA, is amended to read:

**“41-3-609. Criteria for termination.** (1) The court may order a termination of the parent-child legal relationship upon a finding *established by clear and convincing evidence, except as provided in the federal Indian Child Welfare Act and if applicable*, that any of the following circumstances exist:

(a) the parents have relinquished the child pursuant to 42-2-402 and 42-2-412;

(b) the child has been abandoned by the parents;

(c) the parent is convicted of a felony in which sexual intercourse occurred or is a minor adjudicated a delinquent youth because of an act that, if committed by an adult, would be a felony in which sexual intercourse occurred and, as a result of the sexual intercourse, the child is born;

(d) the parent has subjected ~~the~~ a child to any of the circumstances listed in 41-3-423(2)(a) through (2)(e);

(e) the putative father meets any of the criteria listed in 41-3-423(3)(a) through (3)(c); or

(f) the child is an adjudicated youth in need of care and both of the following exist:

(i) an appropriate treatment plan that has been approved by the court has not been complied with by the parents or has not been successful; and

(ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time.

(2) In determining whether the conduct or condition of the parents is unlikely to change within a reasonable time, the court shall enter a finding that continuation of the parent-child legal relationship will likely result in continued abuse or neglect or that the conduct or the condition of the parents renders the parents unfit, unable, or unwilling to give the child adequate parental care. In making the determinations, the court shall consider but is not limited to the following:

(a) emotional illness, mental illness, or mental deficiency of the parent of a duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time;

(b) a history of violent behavior by the parent;

(c) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's ability to care and provide for the child; and

(d) present judicially ordered long-term confinement of the parent.

(3) In considering any of the factors in subsection (2) in terminating the parent-child relationship, the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child.

(4) A treatment plan is not required under this part upon a finding by the court following hearing if:

(a) the parent meets the criteria of subsections (1)(a) through (1)(e);

(b) two medical doctors or clinical psychologists submit testimony that the parent cannot assume the role of parent;

(c) the parent is or will be incarcerated for more than 1 year and reunification of the child with the parent is not in the best interests of the child because of the child's circumstances, including placement options, age, and developmental, cognitive, and psychological needs; or

(d) the death or serious bodily injury, as defined in 45-2-101, of a child caused by abuse or neglect by the parent has occurred.”

**Section 18.** Section 41-3-611, MCA, is amended to read:

**“41-3-611. Effect of decree.** (1) An order for the termination of the parent-child legal relationship divests the child and the parents of all legal rights, powers, immunities, duties, and obligations with respect to each other as provided in Title 40, chapter 6, part 2, and Title 41, chapter 3, part 2, except the right of the child to inherit from the parent.

(2) An order or decree entered pursuant to this part may not disentitle a child to any benefit due the child from any third person, including but not limited to any Indian tribe, agency, state, or the United States.

(3) After the termination of a parent-child legal relationship, the former parent is neither entitled to any notice of proceedings for the adoption of the child nor has any right to object to the adoption or to participate in any ~~other~~ *permanent* placement proceedings held pursuant to ~~41-3-610~~ *41-3-445*.”

**Section 19.** Section 41-3-1008, MCA, is amended to read:

**“41-3-1008. Access to records.** (1) Notwithstanding the provisions of 41-3-205, a board has access to:

(a) any records of the district court that are pertinent to the case; and

(b) pertinent electronic and paper records of the department or other agencies that would be admissible in a dispositional ~~review~~ hearing conducted pursuant to 41-3-438, including school records and reports of private service providers contained in the records of the department or other agencies.

(2) All requested records not already before the board must be submitted by the department within 10 working days after receipt of a request.

(3) A board may retain a reference copy of case material used by the board to make its recommendation if:

(a) the material is necessary for the ongoing work of the board with regard to the particular case or to work of the board; and

(b) the confidentiality of the material is continued and protected in the same manner as other material received from the department. Material retained by the boards is not subject to disclosure under the public records law.

(4) If a board is denied access to requested records, it may request a hearing. The court may require the organization in possession of the records to show cause why the records should not be made available as provided by this section.”

**Section 20.** Section 42-1-103, MCA, is amended to read:

**“42-1-103. Definitions.** As used in this title, unless the context requires otherwise, the following definitions apply:

(1) “Adoptee” means an adopted person or a person who is the subject of adoption proceedings that are intended to result in the adoptee becoming the legal child of another person.

(2) “Adoption” means the act of creating the legal relationship between parent and child when it does not exist genetically.

(3) “Adoptive parent” means an adult who has become the mother or father of a child through the legal process of adoption.

(4) "Agency" means a ~~public or nonprofit entity that is licensed by any jurisdiction of the United States and that~~ *child placement agency licensed by the state of Montana pursuant to Title 52, chapter 8, that is expressly empowered to place children preliminary to a possible adoption.*

(5) "Birth parent" means the woman who gave birth to the child or the father of genetic origin of the child.

(6) "Child" means any person under 18 years of age.

(7) "Confidential intermediary" means a person certified by the department and under contract with or employed by a nonprofit entity with expertise in adoption.

(8) "Court" means a court of record in a competent jurisdiction and in Montana means a district court or a tribal court.

(9) "Department" means the department of public health and human services, provided for in 2-15-2201.

(10) "Direct parental placement adoption" means an adoption in which the parent of the child places the child with a prospective adoptive parent personally known and selected by the parent independent of an agency.

(11) "Extended family member" means a person who is or was the adoptee's parent, grandparent, aunt or uncle, brother or sister, or child.

(12) "Identifying information" means information that directly reveals or indirectly indicates the identity of a person and includes the person's name or address.

(13) "Nonidentifying information" means information that does not directly reveal or indirectly indicate the identity of a person, including:

(a) medical information and information related to general physical characteristics;

(b) family information, including marital status and the existence of siblings;

(c) religious affiliation;

(d) educational background information that does not reveal specific programs or institutions attended;

(e) general occupation;

(f) hobbies; and

(g) photographs provided by any of the parties involved that were specifically intended to be provided to another party.

(14) "Parent" means the birth or adoptive mother or the birth, adoptive, or legal father whose parental rights have not been terminated.

(15) "Placing parent" means a parent who is voluntarily making a child available for adoption.

(16) "Preplacement evaluation" means the home study process conducted by the department or a licensed child-placing agency that:

(a) assists a prospective adoptive parent or family to assess its own readiness to adopt; and

(b) assesses whether the prospective adoptive parent or family and home meet applicable standards.

(17) "Records" means all documents, exhibits, and data pertaining to an adoption.

(18) "Relinquishment" means the informed and voluntary release in writing of all parental rights with respect to a child by a parent to an agency or individual."

**Section 21.** Section 42-3-212, MCA, is amended to read:

**"42-3-212. Court waiver for relatives.** In a direct parental placement adoption, if the court is satisfied that adoption is in the best interests of the child, the court may waive the requirement of a preplacement *and* *postplacement* evaluation when a parent or guardian places a child for adoption directly with an extended family member of the child. ~~A postplacement evaluation must be conducted during the pendency of a proceeding for adoption."~~

**Section 22.** Section 42-6-102, MCA, is amended to read:

**"42-6-102. Disclosure of records — nonidentifying information — consensual release.** (1) The department or *an* authorized person or agency may disclose:

(a) nonidentifying information to an adoptee, an adoptive or birth parent, or an extended family member of an adoptee or birth parent; ~~and~~

(b) identifying information to a court-appointed confidential intermediary upon order of the court or as provided in 50-15-121 and 50-15-122; *and*

(c) *identifying information limited to the specific information required to assist an adoptee to become enrolled in or a member of an Indian tribe.*

(2) Information may be disclosed to any person who consents in writing to the release of confidential information to other interested persons who have also consented. Identifying information pertaining to an adoption involving an adoptee who is still a child may not be disclosed based upon a consensual exchange of information unless the adoptee's adoptive parent consents in writing."

**Section 23.** Section 42-6-109, MCA, is amended to read:

**"42-6-109. Release of original birth certificate — certificate of adoption.** (1) For a person adopted on or before July 1, 1967, in addition to any copy of an adoptee's original birth certificate authorized for release by a court order issued pursuant to 50-15-121 or 50-15-122, the department shall furnish a copy of the original birth certificate upon the written request of an adoptee.

(2) For a person adopted between July 1, 1967, and September 30, 1997, in addition to any copy of an adoptee's original birth certificate authorized for release by a court order issued pursuant to 50-15-121 or 50-15-122, the department shall furnish a copy of the original birth certificate upon a court order.

(3) For a person adopted on or after October 1, 1997, in addition to any copy of an adoptee's original birth certificate authorized for release by a court order issued pursuant to 50-15-121 or 50-15-122, the department shall furnish a copy of the original birth certificate upon:

(a) the written request of an adoptee who has attained 18 years of age unless the birth parent has requested in writing that the original birth certificate not be automatically released; or

(b) a court order.



(4) For a person adopted on or after October 1, 1997, and subject to subsection (5), upon the request of an adoptive parent or an adoptee who has attained 18 years of age, the department shall issue a certificate of adoption that states the date and place of adoption, the date of birth of the adoptee, the name of each adoptive parent, and the name of the adoptee as provided in the decree.

(5) A birth parent may request in writing to the vital statistics bureau that the birth certificate for an adoptee not be released without a court order.

(6) *The department may release a copy of the adoptee's original birth certificate if release of this document is required to assist an adoptee to become enrolled in or a member of an Indian tribe.*

**Section 24.** Section 50-16-535, MCA, is amended to read:

**"50-16-535. 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 consented in writing to 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 ~~his~~ *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 ~~his~~ *the patient's* health care or unless authorized under subsection ~~(1)(i)~~ (1)(j);

(h) the health care information is relevant to a proceeding brought under 50-16-551 through 50-16-553;

(i) *the health care information is relevant to a proceeding brought under Title 41, chapter 3;*

~~(j)~~ (j) 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

~~(k)~~ (k) the health care information is requested pursuant to an investigative subpoena issued under 46-4-301.

(2) ~~Nothing in this~~ *This part authorizes does not authorize* the disclosure of health care information by compulsory legal process or discovery in any judicial, legislative, or administrative proceeding ~~where~~ *in which* disclosure is otherwise prohibited by law."

**Section 25.** Section 50-16-536, MCA, is amended to read:

**“50-16-536. Method of compulsory process.** (1) Unless the court for good cause shown determines that the notification should be waived or modified, if health care information is sought under 50-16-535(1)(b), (1)(d), or (1)(e) or in a civil proceeding or investigation under 50-16-535(1)(~~g~~)(1)(j), the person seeking discovery or compulsory process shall mail a notice by first-class mail to the patient or the patient’s attorney of record of the compulsory process or discovery request at least 10 days before presenting the certificate required under subsection (2) of this section to the health care provider.

(2) Service of compulsory process or discovery requests upon a health care provider must be accompanied by a written certification, signed by the person seeking to obtain health care information or by the person’s authorized representative, identifying at least one subsection of 50-16-535 under which compulsory process or discovery is being sought. The certification must also state, in the case of information sought under 50-16-535(1)(b), (1)(d), or (1)(e) or in a civil proceeding under 50-16-535(1)(~~g~~)(1)(j), that the requirements of subsection (1) of this section for notice have been met. A person may sign the certification only if the person reasonably believes that the subsection of 50-16-535 identified in the certification provides an appropriate basis for the use of discovery or compulsory process. Unless otherwise ordered by the court, the health care provider shall maintain a copy of the process and the written certification as a permanent part of the patient’s health care information.

(3) In response to service of compulsory process or discovery requests, ~~where~~ *when* authorized by law, a health care provider may deny access to the requested health care information. Additionally, a health care provider may deny access to the requested health care information under 50-16-542(1). If access to requested health care information is denied by the health care provider under 50-16-542(1), the health care provider shall submit to the court by affidavit or other reasonable means an explanation of why the health care provider believes the information should be protected from disclosure.

(4) When access to health care information is denied under 50-16-542(1), the court may order disclosure of health care information, with or without restrictions as to its use, as the court considers necessary. In deciding whether to order disclosure, the court shall consider the explanation submitted by the health care provider, the reasons for denying access to health care information set forth in 50-16-542(1), and any arguments presented by interested parties.

(5) A health care provider required to disclose health care information pursuant to compulsory process may charge a reasonable fee, not to exceed the fee provided for in 50-16-540, and may deny examination or copying of the information until the fee is paid.

(6) Production of health care information under 50-16-535 and this section does not in itself constitute a waiver of any privilege, objection, or defense existing under other law or rule of evidence or procedure.”

**Section 26.** Section 50-16-603, MCA, is amended to read:

**“50-16-603. Confidentiality of health care information.** Health care information in the possession of the department, a local board, a local health officer, or their authorized representatives may not be released except:

(1) for statistical purposes, if no identification of individuals can be made from the information released;

(2) when the health care information pertains to a person who has given written consent to the release and has specified the type of information to be released and the person or entity to whom it may be released;

(3) to medical personnel in a medical emergency as necessary to protect the health, life, or well-being of the named person;

(4) as allowed by Title 50, chapters 17 and 18;

(5) to another state or local public health agency, including those in other states, whenever necessary to continue health services to the named person or to undertake public health efforts to prevent or interrupt the transmission of a communicable disease;

(6) in the case of a minor, as required by 41-3-201 or pursuant to an investigation under 41-3-202. ~~If or if the health care information is required in a subsequent to be presented as evidence in a court proceeding involving child abuse, the information may be disclosed only in camera and documents pursuant to Title 41, chapter 3. Documents~~ containing the information must be sealed by the court upon conclusion of the proceedings.

(7) to medical personnel, the department, a local health officer or board, or a district court when necessary to implement or enforce state statutes or state or local health rules concerning the prevention or control of diseases designated as reportable pursuant to 50-1-202, if the release does not conflict with any other provision contained in this part."

**Section 27.** Section 50-16-605, MCA, is amended to read:

**"50-16-605. Judicial, legislative, and administrative proceedings — testimony.** (1) An officer or employee of the department may not be examined in a judicial, legislative, administrative, or other proceeding about the existence or content of records containing individually identifiable health care information, including the results of investigations, unless all individuals whose names appear in the records give written consent to the release of information identifying them.

(2) Subsection (1) does not apply if the health care information is to be released pursuant to 50-16-603(6) and (7)."

**Section 28.** Section 52-2-115, MCA, is amended to read:

**"52-2-115. Department to accept custody of children committed by courts.** The department shall accept the ~~guardianship or physical~~ custody of children ~~committed by the courts to the department~~ transferred to the physical or legal custody of the department by the district court pursuant to the provisions of Title 41, chapter 3, and arrange for their care."

**Section 29.** Section 52-2-602, MCA, is amended to read:

**"52-2-602. Definitions.** For the purposes of this part, the following definitions apply:

(1) "Child-care agency" means a youth care facility in which substitute care is provided to 13 or more children or youth.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Foster child" means a person under 18 years of age who has been placed by the department in a youth care facility.

(4) "Kinship foster home" means a youth care facility in which substitute care is provided to one to six children or youth other than the kinship parent's own children, stepchildren, or wards. The substitute care may be provided by any of the following:

- (a) a member of the child's extended family;
- (b) a member of the child's or family's tribe;
- (c) the child's godparents;
- (d) the child's stepparents; or

(e) a person to whom the child, child's parents, or family ascribe a family relationship and with whom the child has had a significant emotional tie that existed prior to the department's involvement with the child or family.

~~(4)~~(5) "Person" means any individual, partnership, voluntary association, or corporation.

~~(5)~~(6) "Respite care" means the provision of temporary, short-term supervision or care of a foster child, in an emergency or on an intermittent basis, to provide foster parents relief from the daily care requirements of a foster child whose mental or physical condition requires special or intensive supervision or care. Respite care includes but is not limited to homemaker services, child care, and emergency care either in the home or out of the home.

~~(6)~~(7) "Respite care provider" means a person who meets the qualifications and requirements established by the department to provide respite care under 52-2-627.

~~(7)~~(8) "Substitute care" means full-time care of a youth in a residential setting who is placed by the department, another state agency, or a licensed child-placing agency. Individuals who provide care to youth who are recipients of services provided through the department's developmental disabilities, mental health, or medicaid home- and community-based services waiver program are also considered to be providing substitute care. This part does not apply when a person accepts the care and custody of a child on a temporary basis as an accommodation for the parent or parents, guardian, or relative of the child.

~~(8)~~(9) "Transitional living program" means a program with the goal of self-sufficiency in which supervision of the living arrangement is provided for a youth who is 16 years of age or older and under 21 years of age.

~~(9)~~(10) "Youth assessment center" has the meaning provided in 41-5-103.

~~(10)~~(11) "Youth care facility" means a facility that is licensed by the department or by the appropriate licensing authority in another state and in which facility substitute care is provided to youth. The term includes youth foster homes, *kinship foster homes*, youth group homes, *youth shelter care facilities*, child-care agencies, transitional living programs, and youth assessment centers.

~~(11)~~(12) "Youth foster home" means a youth care facility in which substitute care is provided to one to six children or youth other than the foster parents' own children, stepchildren, or wards.

~~(12)~~(13) "Youth group home" means a youth care facility in which substitute care is provided to 7 to 12 children or youth.

(14) "Youth shelter care facility" means a youth care facility that regularly receives children under temporary conditions until the court, probation office,

*department, or other appropriate social services agency has made other provisions for the children's care."*

**Section 30.** Section 52-2-603, MCA, is amended to read:

**"52-2-603. Powers and duties of department.** (1) The department shall:

(a) administer all state and federal funds allocated to the department for youth foster homes, *kinship foster homes*, youth group homes, *youth shelter care facilities*, child-care agencies, and transitional living programs for youth in need of care, as defined in 41-3-102;

(b) exercise licensing authority over all youth foster homes, *kinship foster homes*, youth group homes, *youth shelter care facilities*, child-care agencies, transitional living programs, and youth assessment centers;

(c) collect and disseminate information relating to youth in need of care;

(d) provide for training of program personnel delivering services;

(e) in cooperation with youth care facility providers, develop and implement standards for youth care facilities;

(f) maintain adequate data on placements it funds in order to keep the legislature properly informed of the following:

(i) the number of youth in need of care in out-of-home care facilities;

(ii) the cost per facility for services rendered;

(iii) the type and level of care of services provided by each facility;

(iv) a profile of out-of-home care placements by level of care; and

(v) a profile of public institutional placements;

(g) administer all funds allocated to the department for residential alcohol and drug abuse treatment for indigent youths in need of care, indigent youths in need of intervention, and indigent delinquent youths who require treatment; and

(h) provide reimbursement for mental health outpatient counseling services for persons who experience the death of a foster child while providing substitute care to the foster child in a youth care facility.

(2) The department may:

(a) enter into contracts with nonprofit corporations or associations or private organizations to provide substitute care for youth in need of care in youth care facilities;

(b) accept gifts, grants, and donations of money and property from public and private sources to initiate and maintain community-based services to youth;

(c) adopt rules to carry out the administration and purposes of this part.

(3) The department shall pay for room, board, clothing, personal needs, and transportation in youth foster care homes and youth group homes for youth who are in the physical or legal custody of the department and who need to be placed in the facilities. Payments for the clothing of a youth placed in a youth foster home must be provided to the extent that the youth needs a basic wardrobe or has a special clothing need. Upon approval by the department, payments under this subsection may continue for a youth up to 21 years of age who remains in substitute care. Payments under this subsection may not exceed appropriations for the purposes of this subsection.

(4) The department may provide a subsidy for a guardianship of a child who is in the department's legal custody if the guardianship has been approved by the department pursuant to 41-3-444 and in accordance with eligibility criteria established by department rule."

**Section 31.** Section 76-2-411, MCA, is amended to read:

**"76-2-411. Definition of community residential facility.** "Community residential facility" means:

(1) a community group home for developmentally, mentally, or severely disabled persons ~~which~~ *that* does not provide skilled or intermediate nursing care;

(2) a youth foster home, a *kinship foster home*, a *youth shelter care facility*, a *transitional living program*, or youth group home as defined in 52-2-602;

(3) a halfway house operated in accordance with regulations of the department of public health and human services for the rehabilitation of alcoholics or drug dependent persons; or

(4) a licensed adult foster family care home."

**Section 32.** Section 76-2-412, MCA, is amended to read:

**"76-2-412. Relationship of foster homes, kinship foster homes, youth shelter care facilities, youth group homes, community residential facilities, and day-care homes to zoning.** (1) A *foster home*, *kinship foster home*, *youth shelter care facility*, or youth group home operated under the provisions of 52-2-621 through 52-2-623 or a community residential facility serving ~~8~~ *eight* or fewer persons is considered a residential use of property for purposes of zoning if the home provides care on a 24-hour-a-day basis.

(2) A family day-care home or a group day-care home registered by the department of public health and human services under Title 52, chapter 2, part 7, is considered a residential use of property for purposes of zoning.

(3) The facilities listed in subsections (1) and (2) are a permitted use in all residential zones, including but not limited to residential zones for single-family dwellings. Any safety or sanitary regulation of the department of public health and human services or any other agency of the state or a political subdivision of the state that is not applicable to residential occupancies in general may not be applied to a community residential facility serving 8 or fewer persons or to a day-care home serving 12 or fewer children.

(4) This section may not be construed to prohibit a city or county from requiring a conditional use permit in order to maintain a home pursuant to the provisions of subsection (1) if the home is licensed by the department of public health and human services. A city or county may not require a conditional use permit in order to maintain a day-care home registered by the department of public health and human services."

**Section 33. Repealer.** Section 41-3-610, MCA, is repealed.

**Section 34. 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 band of Chippewa.

**Section 35. Directions to code commissioner.** Whenever a term in 41-3-102 that has been amended appears in legislation enacted by the 2003

legislature, the code commissioner is directed to change it to an appropriate reference to the amended term.

Approved April 25, 2003

## CHAPTER NO. 505

[SB 155]

AN ACT REVISING THE TAXATION OF CLASS EIGHT PROPERTY BY PROVIDING THAT THE COMPUTATIONS FOR DETERMINING WHETHER THE CLASS EIGHT RATE IS TO BE REDUCED ARE TO BE MADE AT LEAST 1 YEAR AND 2 MONTHS PRIOR TO THE AFFECTED TAX YEAR TO ALLOW FOR LEGISLATIVE ACTION; CLARIFYING THE DATA USED BY THE DEPARTMENT OF REVENUE TO CALCULATE THE PERCENTAGE GROWTH INFLATION-ADJUSTED MONTANA WAGE AND SALARY INCOME FOR DETERMINING WHETHER THE CLASS EIGHT TAX RATE IS TO BE REDUCED; AND AMENDING SECTION 15-6-138, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TRANSITION PROVISION.

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

**Section 1.** Section 15-6-138, MCA, is amended to read:

**“15-6-138. (Temporary) Class eight property — description — taxable percentage.** (1) Class eight property includes:

- (a) all agricultural implements and equipment that are not exempt under 15-6-201(1)(bb);
- (b) all mining machinery, fixtures, equipment, tools that are not exempt under 15-6-201(1)(r), and supplies except those included in class five;
- (c) all oil and gas production machinery, fixtures, equipment, including pumping units, oil field storage tanks, water storage tanks, water disposal injection pumps, gas compressor and dehydrator units, communication towers, gas metering shacks, treaters, gas separators, water flood units, gas boosters, and similar equipment that is skidable, portable, or movable, tools that are not exempt under 15-6-201(1)(r), and supplies except those included in class five;
- (d) all manufacturing machinery, fixtures, equipment, tools, except a certain value of hand-held tools and personal property related to space vehicles, ethanol manufacturing, and industrial dairies and milk processors as providers as provided in 15-6-201, and supplies except those included in class five;
- (e) all goods and equipment that are intended for rent or lease, except goods and equipment that are specifically included and taxed in another class;
- (f) special mobile equipment as defined in 61-1-104;
- (g) furniture, fixtures, and equipment, except that specifically included in another class, used in commercial establishments as defined in this section;
- (h) x-ray and medical and dental equipment;
- (i) citizens' band radios and mobile telephones;
- (j) radio and television broadcasting and transmitting equipment;
- (k) cable television systems;
- (l) coal and ore haulers;

(m) theater projectors and sound equipment; and

(n) all other property that is not included in any other class in this part, except that property that is subject to a fee in lieu of a property tax.

(2) As used in this section, "coal and ore haulers" means nonhighway vehicles that exceed 18,000 pounds per axle and that are primarily designed and used to transport coal, ore, or other earthen material in a mining or quarrying environment.

(3) "Commercial establishment" includes any hotel; motel; office; petroleum marketing station; or service, wholesale, retail, or food-handling business.

(4) Class eight property is taxed at 3% of its market value.

(5) (a) If, in any year beginning with tax year 2004, the percentage growth in inflation-adjusted Montana wage and salary income, ~~in the last full year for which data is available~~, is at least 2.85% from the ~~prior year prior to the base year to the base year~~ year, then the tax rate for class eight property will be reduced by 1% each year until the tax rate reaches zero.

(b) *For each tax year, the base year is the year 3 years before the applicable tax year and the target year is the year 2 years before the applicable tax year.*

~~(b)~~(c) The department shall calculate the percentage growth in subsection (5)(a) ~~by October 30 of each target year~~ by using the formula  $(W/CPI) - 1$ , where:

(i) W is the Montana wage and salary income for the ~~most current available calendar base year~~ divided by the Montana wage and salary income for the ~~year prior to the most current available~~ calendar year prior to the base year; and

(ii) CPI is the consumer price index for the ~~most current available calendar base year~~ used in subsection ~~(5)(b)(i)~~ (5)(c)(i) divided by the consumer price index for the year prior to the most current ~~available~~ calendar year prior to the base year ~~as~~ used in subsection ~~(5)(b)(i)~~ (5)(c)(i).

~~(e)~~(d) For purposes of determining the percentage growth in subsection (5)(a), the department shall use *the bureau of economic analysis of the United States department of commerce Montana wage and salary disbursements, fall SA07 (state annual) for the target year* ~~the wage and salary data series referred to as the bureau of economic analysis of the United States department of commerce Montana wage and salary disbursements.~~

(e) Inflation must be measured by the consumer price index, U.S. city average, all urban consumers (CPI-U), using the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor.

(6) The class eight property of a person or business entity that owns an aggregate of \$5,000 or less in market value of class eight property is exempt from taxation. (Repealed on occurrence of contingency—secs. 27(2), 31(4), Ch. 285, L. 1999.)"

**Section 2. Effective date — transition.** (1) [This act] is effective on passage and approval.

(2) The department of revenue shall perform the calculation in 15-16-138(5) for the tax year 2004 not later than [60 days after the effective date of this act].

Approved April 25, 2003



**CHAPTER NO. 506**

[SB 231]

AN ACT REPLACING THE REVISED UNIFORM PRINCIPAL AND INCOME ACT WITH THE MONTANA UNIFORM PRINCIPAL AND INCOME ACT; AND REPEALING SECTIONS 72-34-401, 72-34-402, 72-34-403, 72-34-404, 72-34-405, 72-34-406, 72-34-407, 72-34-408, 72-34-409, 72-34-410, 72-34-411, 72-34-412, AND 72-34-416, MCA.

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

**Section 1. Short title.** [Sections 1 through 33] may be cited as the "Montana Uniform Principal and Income Act".

**Section 2. Definitions.** As used in [sections 1 through 33], unless the context requires otherwise, the following definitions apply:

(1) "Accounting period" means a calendar year unless another 12-month period is selected by a fiduciary. The term includes a portion of a calendar year or other 12-month period that begins when an income interest begins or ends when an income interest ends.

(2) "Fiduciary" means a personal representative or a trustee.

(3) "Income" means money or property that a fiduciary receives as current return from a principal asset. The term includes a portion of receipts from a sale, exchange, or liquidation of a principal asset, to the extent provided in [sections 13 through 27].

(4) "Income beneficiary" means a person to whom net income of a trust is or may be payable.

(5) "Income interest" means the right of an income beneficiary to receive all or part of net income, whether the trust requires it to be distributed or authorizes it to be distributed in the trustee's discretion.

(6) "Mandatory income interest" means the right of an income beneficiary to receive net income that the trust requires the fiduciary to distribute.

(7) "Net income" means the total receipts allocated to income during an accounting period minus the disbursements made from income during the accounting period, plus or minus transfers under this chapter to or from income during the accounting period.

**Section 3. Allocation between principal and income — impartial exercise of discretion.** (1) In allocating receipts and disbursements to or between principal and income, and with respect to any other matter within the scope of [sections 1 through 33], a fiduciary:

(a) shall administer a trust or decedent's estate in accordance with the trust or the will, even if there is a different provision in [sections 1 through 33];

(b) may administer a trust or decedent's estate by the exercise of a discretionary power of administration given to the fiduciary by the trust or the will, even if the exercise of the power produces a result different from a result required or permitted by [sections 1 through 33] and no inference that the fiduciary has improperly exercised the discretion arises from the fact that the fiduciary has made an allocation contrary to a provision of [sections 1 through 33];

(c) shall administer a trust or decedent's estate in accordance with [sections 1 through 33] if the trust or the will does not contain a different provision or does not give the fiduciary a discretionary power of administration; and

(d) shall add a receipt or charge a disbursement to principal to the extent that the trust or the will and [sections 1 through 33] do not provide a rule for allocating the receipt or disbursement to or between principal and income.

(2) In exercising a discretionary power of administration regarding a matter within the scope of [sections 1 through 33], whether granted by a trust, a will, or [sections 1 through 33], including the trustee's power to adjust under [section 4(1)], the fiduciary shall administer the trust or decedent's estate impartially, except to the extent that the trust or the will expresses an intention that the fiduciary shall or may favor one or more of the beneficiaries. The exercise of discretion in accordance with [sections 1 through 33] is presumed to be fair and reasonable to all beneficiaries.

**Section 4. Adjustments between principal and income.** (1) Subject to subsection (2), a trustee may make an adjustment between principal and income to the extent the trustee considers necessary if all of the following conditions are satisfied:

(a) the trustee invests and manages trust assets under the prudent investor rule [section 3 of LC 1497];

(b) the trust describes the amount that must or may be distributed to a beneficiary by referring to the trust's income; and

(c) the trustee determines, after applying the rules in [section 3(1)] and considering any power the trustee may have under the trust to invade principal or accumulate income, that the trustee is unable to comply with [section 3(2)].

(2) A trustee may not make an adjustment between principal and income in any of the following circumstances:

(a) when it would diminish the income interest in a trust:

(i) that requires all of the income to be paid at least annually to a spouse; and

(ii) for which, if the trustee did not have the power to make the adjustment, an estate tax or gift tax marital deduction would be allowed, in whole or in part;

(b) when it would reduce the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;

(c) when it would change the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;

(d) when it would be made from any amount that is permanently set aside for charitable purposes under a will or trust, unless both income and principal are set aside;

(e) when possessing or exercising the power to make an adjustment would cause an individual to be treated as the owner of all or part of the trust for income tax purposes and the individual would not be treated as the owner if the trustee did not possess the power to make an adjustment;

(f) when possessing or exercising the power to make an adjustment would cause all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to make an adjustment; or

(g) when the trustee is a beneficiary of the trust.

(3) Notwithstanding 72-33-611, if subsection (2)(e), (2)(f), or (2)(g) of this section applies to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is not permitted by the trust.

(4) A trustee may release the entire power conferred by subsection (1) or may release only the power to adjust from income to principal or the power to adjust from principal to income in either of the following circumstances:

(a) if the trustee is uncertain about whether possessing or exercising the power will cause a result described in subsections (2)(a) through (2)(f); or

(b) if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection (2).

(5) A release under subsection (4) may be permanent or for a specified period, including a period measured by the life of an individual.

(6) A trust that limits the power of a trustee to make an adjustment between principal and income does not affect the application of this section unless it is clear from the trust that it is intended to deny the trustee the power of adjustment provided by subsection (1).

(7) In deciding whether and to what extent to exercise the power to make adjustments under this section, the trustee may consider, but is not limited to considering, any of the following:

(a) the nature, purpose, and expected duration of the trust;

(b) the intent of the trustor;

(c) the identity and circumstances of the beneficiaries;

(d) the needs for liquidity, regularity of income, and preservation and appreciation of capital;

(e) the assets held in the trust, the extent to which the assets consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property, the extent to which an asset is used by a beneficiary, and whether an asset was purchased by the trustee or received from the trustor;

(f) the net amount allocated to income under other statutes and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available;

(g) whether and to what extent the trust gives the trustee the power to invade principal or accumulate income or prohibits the trustee from invading principal or accumulating income and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;

(h) the actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation; or

(i) the anticipated tax consequences of an adjustment.

(8) Nothing in [sections 1 through 33] or this section is intended to create or imply a duty to make an adjustment, and a trustee is not liable for not considering whether to make an adjustment or for choosing not to make an adjustment.

**Section 5. Notice of proposed action — objections by beneficiary — liability of trustee — proceedings.** (1) A trustee may give a notice of proposed action regarding a matter governed by [sections 1 through 33] as provided in this section. For the purpose of this section, a proposed action includes a course of action and a decision not to take action.

(2) The trustee shall mail notice of the proposed action to all adult beneficiaries who are receiving or are entitled to receive income under the trust or to receive a distribution of principal if the trust were terminated at the time the notice is given.

(3) A notice of proposed action need not be given to any person who consents in writing to the proposed action. The consent may be executed at any time before or after the proposed action is taken.

(4) The notice of proposed action must state that it is given pursuant to this section and must state all of the following:

(a) the name and mailing address of the trustee;

(b) the name and telephone number of a person who may be contacted for additional information;

(c) a description of the action proposed to be taken and an explanation of the reasons for the action;

(d) the time within which objections to the proposed action can be made, which must be at least 30 days from the mailing of the notice of proposed action; and

(e) the date on or after which the proposed action may be taken or is effective.

(5) A beneficiary may object to the proposed action by mailing a written objection to the trustee at the address stated in the notice of proposed action within the time period specified in the notice of proposed action.

(6) A trustee is not liable to a beneficiary for an action regarding a matter governed by [sections 1 through 33] if the trustee does not receive a written objection to the proposed action from the beneficiary within the applicable period and the other requirements of this section are satisfied. If no beneficiary entitled to notice objects under this section, the trustee is not liable to any current or future beneficiary with respect to the proposed action.

(7) If the trustee receives a written objection within the applicable period, either the trustee or a beneficiary may petition the court to have the proposed action taken as proposed, taken with modifications, or denied. In the proceeding, a beneficiary objecting to the proposed action has the burden of proving that the trustee's proposed action should not be taken. A beneficiary who has not objected is not estopped from opposing the proposed action in the proceeding. If the trustee decides not to implement the proposed action, the trustee shall notify the beneficiaries of the decision not to take the action and the reasons for the decision, and the trustee's decision not to implement the proposed action does not itself give rise to liability to any current or future beneficiary. A beneficiary may petition the court to have the action taken and has the burden of proving that it should be taken.

**Section 6. Proceedings relating to adjustments — remedy.** In a proceeding with respect to a trustee's exercise or nonexercise of the power to make an adjustment under [section 4], the sole remedy is to direct, deny, or revise an adjustment between principal and income.

**Section 7. Application of [sections 1 through 33].** [Sections 1 through 33] apply to every trust or decedent's estate existing on or after [the effective date of this act], except as otherwise expressly provided in the trust or will or in [sections 1 through 33].

**Section 8. Rules applicable after decedent's death or termination of income interest.** After the decedent's death, in the case of a decedent's estate, or after an income interest in a trust ends, the following rules apply:

(1) If property is specifically given to a beneficiary, by will or trust, the fiduciary of the estate or of the terminating income interest shall distribute the net income and principal receipts to the beneficiary who is to receive the property, subject to the following rules:

(a) the net income and principal receipts from the specifically given property are determined by including all of the amounts the fiduciary receives or pays with respect to the property, whether the amounts accrued or became due before, on, or after the decedent's death or an income interest in a trust ends and by making a reasonable provision for amounts that the fiduciary believes the estate or terminating income interest may become obligated to pay after the property is distributed; and

(b) the fiduciary may not reduce income and principal receipts from the specifically given property on account of a payment described in [section 27] to the extent that the will or the trust requires payment from other property or to the extent that the fiduciary recovers the payment from a third person.

(2) The fiduciary shall distribute to a beneficiary who receives a pecuniary amount, whether outright or in trust, the interest or any other amount provided by the will, the trust, or 72-3-913 from the remaining net income determined under subsection (3) of this section or from principal to the extent that net income is insufficient.

(3) The fiduciary shall determine the remaining net income of the decedent's estate or terminating income interest as provided in [sections 1 through 33] and by doing the following:

(a) including in net income all income from property used to discharge liabilities;

(b) paying from income or principal, in the fiduciary's discretion, fees of attorneys, accountants, and fiduciaries, court costs and other expenses of administration, and interest on death taxes, except that the fiduciary may pay these expenses from income of property passing to a trust for which the fiduciary claims an estate tax marital or charitable deduction only to the extent that the payment of these expenses from income will not cause the reduction or loss of the deduction;

(c) paying from principal all other disbursements made or incurred in connection with the settlement of a decedent's estate or the winding up of a terminating income interest, including debts, funeral expenses, disposition of remains, family allowances, and death taxes and related penalties that are apportioned to the estate or terminating income interest by the will, the trust, or Title 72, chapter 16, part 6.

(4) After distributions required by subsection (2), the fiduciary shall distribute the remaining net income determined under subsection (3) in the manner provided in [section 9] to all other beneficiaries.

**Section 9. Beneficiary's portion of net income — maintenance of records — distribution date.** (1) Each beneficiary described in [section 8(4)] is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution dates and without reducing the values by any unpaid principal obligations.

(2) If a fiduciary does not distribute all of the collected but undistributed net income to each beneficiary as of a distribution date, the fiduciary shall maintain appropriate records showing the interest of each beneficiary in that net income.

(3) The distribution date for purposes of this section may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which assets are actually distributed.

**Section 10. Beneficiary's entitlement to net income — assets subject to trust — assets subject to successive income interest — termination of income interest.** (1) An income beneficiary is entitled to net income from the date on which the income interest begins. An income interest begins on the date specified in the trust or, if no date is specified, on the date an asset becomes subject to a trust or successive income interest.

(2) An asset becomes subject to a trust at the following times:

(a) in the case of an asset that is transferred to a trust during the transferor's life, on the date it is transferred to the trust;

(b) in the case of an asset that becomes subject to a trust by reason of a will, even if there is an intervening period of administration of the testator's estate, on the date of the testator's death; or

(c) in the case of an asset that is transferred to a fiduciary by a third party because of the individual's death, on the date of the individual's death.

(3) An asset becomes subject to a successive income interest on the day after the preceding income interest ends, as determined under subsection (4), even if there is an intervening period of administration to wind up the preceding income interest.

(4) An income interest ends on the day before an income beneficiary dies or another terminating event occurs or on the last day of a period during which there is no beneficiary to whom a trustee may distribute income.

**Section 11. Allocation of income receipt or disbursement.** (1) A trustee shall allocate an income receipt or disbursement other than one to which [section 8(1)] applies to principal if its due date occurs before a decedent dies in the case of an estate or before an income interest begins in the case of a trust or successive income interest.

(2) A trustee shall allocate an income receipt or disbursement to income if its due date occurs on or after the date on which a decedent dies or an income interest begins and it is a periodic due date. An income receipt or disbursement must be treated as accruing from day to day if its due date is not periodic or it has no due date. The portion of the receipt or disbursement accruing before the date on which a decedent dies or an income interest begins must be allocated to principal, and the balance must be allocated to income.

(3) An item of income or an obligation is due on the date the payer is required to make a payment. If a payment date is not stated, there is no due date for the purposes of [sections 1 through 33]. Distributions to shareholders or other owners from an entity to which [section 13] applies are considered to be due on

the date fixed by the entity for determining who is entitled to receive the distribution or, if no date is fixed, on the declaration date for the distribution. A due date is periodic for receipts or disbursements that must be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.

**Section 12. Undistributed income — definition — payment to beneficiary.** (1) (a) For the purposes of this section, “undistributed income” means net income received before the date on which an income interest ends.

(b) The term does not include an item of income or expense that is due or accrued or net income that has been added or is required to be added to principal by the trust.

(2) Except as provided in subsection (3), on the date when a mandatory income interest ends, the trustee shall pay to a mandatory income beneficiary who survives that date or to the estate of a deceased mandatory income beneficiary whose death causes the interest to end the beneficiary’s share of the undistributed income that is not disposed of under the trust.

(3) If immediately before the income interest ends, the beneficiary under subsection (2) has an unqualified power to revoke more than 5% of the trust, the undistributed income from the portion of the trust that may be revoked must be added to principal.

(4) When a trustee’s obligation to pay a fixed annuity or a fixed fraction of the value of the trust’s assets ends, the trustee shall prorate the final payment.

**Section 13. Allocation of receipts to income or principal — entity defined.** (1) For the purposes of this section, “entity” means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, or any other organization in which a trustee has an interest other than a trust or decedent’s estate to which [section 14] applies, a business or activity to which [section 15] applies, or an asset-backed security to which [section 27] applies.

(2) Except as otherwise provided in this section, a trustee shall allocate to income money received from an entity.

(3) A trustee shall allocate to principal the following receipts from an entity:

(a) property other than money;

(b) money received in one distribution or a series of related distributions in exchange for part or all of a trust’s interest in the entity;

(c) money received in total or partial liquidation of the entity; and

(d) money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed is a capital gain dividend for federal income tax purposes.

(4) For purposes of subsection (3)(c):

(a) money is received in partial liquidation:

(i) to the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation; or

(ii) if the total amount of money and property received in a distribution or series of related distributions is greater than 20% of the entity’s gross assets, as shown by the entity’s yearend financial statements immediately preceding the initial receipt;

(b) money is not received in partial liquidation, nor may it be taken into account under subsection (4)(a)(ii), to the extent that it does not exceed the amount of income tax that a trustee or beneficiary is required to pay on taxable income of the entity that distributes the money.

(5) A trustee may rely on a statement made by an entity about the source or character of a distribution if the statement is made at or near the time of distribution by the entity's board of directors or other person or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation's board of directors.

**Section 14. Allocation of amounts received from specified trusts or estates.** A trustee shall allocate to income an amount received as a distribution of income from a trust or a decedent's estate, other than an interest in an investment entity, in which the trust has an interest other than a purchased interest, and shall allocate to principal an amount received as a distribution of principal from the trust or estate.

**Section 15. Separate accounting records for business or other activity.** (1) If a trustee who conducts a business or other activity determines that it is in the best interest of all the beneficiaries to account separately for the business or other activity instead of accounting for it as part of the trust's general accounting records, the trustee may maintain separate accounting records for its transactions, whether or not its assets are segregated from other trust assets.

(2) A trustee who accounts separately for a business or other activity may determine the extent to which its net cash receipts must be retained for working capital, the acquisition or replacement of fixed assets, and its other reasonably foreseeable needs, and the extent to which the remaining net cash receipts are accounted for as principal or income in the trust's general accounting records. If a trustee sells assets of the business or other activity, other than in the ordinary course of the business or other activity, the trustee shall account for the net amount received as principal in the trust's general accounting records to the extent the trustee determines that the amount received is no longer required in the conduct of the business or other activity.

(3) Businesses and other activities for which a trustee may maintain separate accounting records include the following:

- (a) retail, manufacturing, service, and other traditional business activities;
- (b) farming;
- (c) raising and selling livestock and other animals;
- (d) managing rental properties;
- (e) extracting minerals and other natural resources;
- (f) timber operations; and
- (g) activities to which [section 26] applies.

**Section 16. Amounts allocated to principal.** A trustee shall allocate to principal:

(1) to the extent not allocated to income under this chapter, assets received from a transferor during the transferor's lifetime, a decedent's estate, a trust with a terminating income interest, or a payer under a contract naming the trust or its trustee as beneficiary;



(2) subject to any contrary rules in [sections 13 through 15], [sections 16 through 19], and [sections 20 through 27], money or other property received from the sale, exchange, liquidation, or change in form of a principal asset, including realized profit;

(3) amounts recovered from third parties to reimburse the trust because of disbursements described in [section 29(1)(g)] or for other reasons to the extent not based on the loss of income;

(4) proceeds of property taken by eminent domain, but a separate award made for the loss of income with respect to an accounting period during which a current income beneficiary had a mandatory income interest is income;

(5) net income received in an accounting period during which there is no beneficiary to whom a trustee may or must distribute income; and

(6) other receipts allocated to principal as provided in [sections 20 through 27].

**Section 17. Amounts received from rental property allocation.**

Unless the trustee accounts for receipts from rental property pursuant to [section 15], the trustee shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods, must be added to principal and held subject to the terms of the lease and is not available for distribution to a beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount.

**Section 18. Interest on obligation to pay money — allocation.** (1) An amount received as interest, whether determined at a fixed, variable, or floating rate, on an obligation to pay money to the trustee, including an amount received as consideration for prepaying principal, must be allocated to income without any provision for amortization of premium.

(2) An amount received from the sale, redemption, or other disposition of an obligation to pay money to the trustee more than 1 year after it is purchased or acquired by the trustee, including an obligation whose purchase price or its value when it is otherwise acquired is less than its value at maturity, must be allocated to principal. If the obligation matures within 1 year after it is purchased or acquired by the trustee, an amount received in excess of its purchase price or its value when it is otherwise acquired must be allocated to income.

(3) This section does not apply to an obligation to which [section 21, 22, 23, 24, 26, or 27] applies.

**Section 19. Life insurance policy proceeds — proceeds of contracts insuring against certain losses — allocation.** (1) Except as otherwise provided in subsection (2), a trustee shall allocate to principal the proceeds of a life insurance policy or other contract in which the trust or its trustee is named as beneficiary, including a contract that insures the trust or its trustee against loss for damage to, destruction of, or loss of title to a trust asset. The trustee shall allocate dividends on an insurance policy to income if the premiums on the policy are paid from income and to principal if the premiums are paid from principal.

(2) A trustee shall allocate to income proceeds of a contract that insures the trustee against loss of occupancy or other use by an income beneficiary, loss of income, or, subject to [section 15], loss of profits from a business.

(3) This section does not apply to a contract to which [section 21] applies.

**Section 20. Insubstantial allocation — allocation of entire amount to principal — exceptions.** (1) If a trustee determines that an allocation between principal and income required by [section 21, 22, 23, 24, or 27] is insubstantial, the trustee may allocate the entire amount to principal unless one of the circumstances described in [section 4(2)] applies to the allocation. This power may be exercised by a cotrustee in the circumstances described in [section 4(3)] and may be released for the reasons and in the manner provided in [section 4(4) and (5)].

(2) An allocation is presumed to be insubstantial in either of the following cases:

(a) when the amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than 10%; or

(b) when the value of the asset producing the receipt for which the allocation would be made is less than 10% of the total value of the trust's assets at the beginning of the accounting period.

(3) Nothing in this section imposes a duty on the trustee to make an allocation under this section, and the trustee is not liable for failure to make an allocation under this section.

**Section 21. Payments characterized as interest or dividend — allocation to income — allocation of other payments — excess allocation to income in order to obtain estate tax marital deduction.** (1) In this section, "payment" means a payment that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payer in exchange for future payments. The term includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer, including a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan.

(2) To the extent that a payment is characterized as interest or a dividend or a payment made in lieu of interest or a dividend, a trustee shall allocate it to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend, or an equivalent payment.

(3) If no part of a payment is characterized as interest, a dividend, or an equivalent payment and all or part of the payment is required to be made, a trustee shall allocate to income 10% of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this subsection, a payment is not "required to be made" to the extent that it is made because the trustee exercises a right of withdrawal.

(4) If, to obtain an estate tax marital deduction for a trust, a trustee allocates more of a payment to income than provided by this section, the trustee shall allocate to income the additional amount necessary to obtain the marital deduction.

(5) This section does not apply to payments to which [section 22] applies.

**Section 22. Receipts from liquidating assets — allocation.** (1) In this section, “liquidating asset” means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration. The term includes a leasehold, patent, copyright, royalty right, and right to receive payments under an arrangement that does not provide for the payment of interest on the unpaid balance. The term does not include a payment subject to [section 21], natural resources subject to [section 23], timber subject to [section 24], a derivative or option subject to [section 26], an asset subject to [section 27], or any asset for which the trustee establishes a reserve for depreciation under [section 30].

(2) A trustee shall allocate to income 10% from a liquidating asset and the balance to principal.

**Section 23. Receipts from mineral interests and other natural resources — allocation.** (1) To the extent that a trustee accounts for receipts from an interest in minerals or other natural resources pursuant to this section, the trustee shall allocate them as follows:

(a) if received as a nominal bonus, nominal delay rental, or nominal annual rent on a lease, a receipt must be allocated to income;

(b) if received from a production payment, a receipt must be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance must be allocated to principal.

(c) if an amount received as a royalty, shut-in-well payment, take-or-pay payment, bonus, or delay rental is more than nominal, 15% must be allocated to principal and the balance to income; and

(d) if an amount is received from a working interest or any other interest in mineral or other natural resources not described in subsection (1)(a), (1)(b), or (1)(c), 15% of the net amount received must be allocated to principal and the balance to income.

(2) An amount received on account of an interest in water that is renewable must be allocated to income. If the water is not renewable, 15% of the amount must be allocated to principal and the balance to income.

(3) [Sections 1 through 33] apply whether or not a decedent or donor was extracting minerals, water, or other natural resources before the interest became subject to the trust.

**Section 24. Receipts from sale of timber and related products — allocation.** (1) To the extent that a trustee accounts for receipts from the sale of timber and related products pursuant to this section, the trustee shall allocate the net receipts as follows:

(a) to income to the extent that the amount of timber removed from the land does not exceed the rate of growth of the timber during the accounting periods in which a beneficiary has a mandatory income interest;

(b) to principal to the extent that the amount of timber removed from the land exceeds the rate of growth of the timber or the net receipts are from the sale of standing timber;

(c) to or between income and principal if the net receipts are from the lease of timberland or from a contract to cut timber from land owned by a trust, by determining the amount of timber removed from the land under the lease or contract and applying the rules in subsections (1)(a) and (1)(b);

(d) to principal to the extent that advance payments, bonuses, and other payments are not allocated pursuant to subsection (1)(a), (1)(b), or (1)(c).

(2) In determining net receipts to be allocated under subsection (1), a trustee shall deduct and transfer to principal a reasonable amount for depletion.

(3) [Sections 1 through 33] apply whether or not a decedent or transferor was harvesting timber from the property before it became subject to the trust.

**Section 25. Increasing income in order to maintain marital deduction.** (1) If a marital deduction is allowed for all or part of a trust whose assets consist substantially of property that does not provide the spouse with sufficient income from or use of the trust assets and if the amounts that the trustee transfers from principal to income under [section 4] and distributes to the spouse from principal pursuant to the terms of the trust are insufficient to provide the spouse with the beneficial enjoyment required to obtain the marital deduction, the spouse may require the trustee to make property productive of income or convert it into productive property or exercise the power under [section 4(1)] within a reasonable time. The trustee may decide which action or combination of actions to take.

(2) In cases not governed by subsection (1), proceeds from the sale or other disposition of a trust asset are principal without regard to the amount of income the asset produces during any accounting period.

**Section 26. Transactions in derivatives — allocations of receipts and disbursements — options to buy or sell property — allocation of amounts received or paid.** (1) In this section, “derivative” means a contract or financial instrument or a combination of contracts and financial instruments that gives a trust the right or obligation to participate in some or all changes in the price of a tangible or intangible asset or group of assets or changes in a rate, an index of prices or rates, or other market indicator for an asset or a group of assets.

(2) To the extent that a trustee does not account under [section 15] for transactions in derivatives, the trustee shall allocate to principal receipts from and disbursements made in connection with those transactions.

(3) If a trustee grants an option to buy property from the trust, whether or not the trust owns the property when the option is granted, grants an option that permits another person to sell property to the trust, or acquires an option to buy property for the trust or an option to sell an asset owned by the trust and the trustee or other owner of the asset is required to deliver the asset if the option is exercised, an amount received for granting the option must be allocated to principal. An amount paid to acquire the option must be paid from principal. A gain or loss realized upon the exercise of an option, including an option granted to a trustor of the trust for services rendered, must be allocated to principal.

**Section 27. Payments from collateral financial assets and payments in exchange for interest in asset-backed security — allocation.** (1) In this section, “asset-backed security” means an asset whose value is based upon the right it gives the owner to receive distributions from the proceeds of financial assets that provide collateral for the security. The term includes an asset that gives the owner the right to receive from the collateral financial assets only the interest or other current return or only the proceeds other than interest or current return. The term does not include an asset to which [section 13 or 21] applies.

(2) If a trust receives a payment from interest or other current return and from other proceeds of the collateral financial assets, the trustee shall allocate to income the portion of the payment that the payer identifies as being from interest or other current return and shall allocate the balance of the payment to principal.

(3) If a trust receives one or more payments in exchange for the trust's entire interest in an asset-backed security in one accounting period, the trustee shall allocate the payments to principal. If a payment is one of a series of payments that will result in the liquidation of the trust's interest in the security over more than one accounting period, the trustee shall allocate 10% of the payment to income and the balance to principal.

**Section 28. Disbursements from income.** A trustee shall make the following disbursements from income to the extent that they are not disbursements to which [section 8(3)(b) or 8(3)(c)] applies:

(1) except as otherwise ordered by the court, one-half of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee;

(2) except as otherwise ordered by the court, one-half of all expenses for accountings, judicial proceedings, or other matters that involve both the income and remainder interests;

(3) all of the other ordinary expenses incurred in connection with the administration, management, or preservation of trust property and the distribution of income, including interest, ordinary repairs, regularly recurring taxes assessed against principal, and expenses of a proceeding or other matter that concerns primarily the income interest; and

(4) all recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.

**Section 29. Disbursements from principal.** (1) A trustee shall make the following disbursements from principal:

(a) except as otherwise ordered by the court, the remaining one-half of the disbursements described in [section 28(1) and (2)];

(b) except as otherwise ordered by the court, all of the trustee's compensation calculated on principal as a fee for acceptance, distribution, or termination and disbursements made to prepare property for sale;

(c) payments on the principal of a trust debt;

(d) expenses of a proceeding that concerns primarily principal, including a proceeding to construe the trust or to protect the trust or its property;

(e) premiums paid on a policy of insurance not described in [section 28(4)] of which the trust is the owner and beneficiary;

(f) estate, inheritance, and other transfer taxes, including penalties, apportioned to the trust; and

(g) disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination, monitoring remedial activities and the release of substances, preventing future releases of substances, collecting amounts from persons liable or potentially liable for the costs of those activities, penalties imposed under environmental laws or regulations and other payments made to comply with

those laws or regulations, statutory or common law claims by third parties, and defending claims based on environmental matters.

(2) If a principal asset is encumbered with an obligation that requires income from that asset to be paid directly to the creditor, the trustee shall transfer from principal to income an amount equal to the income paid to the creditor in reduction of the principal balance of the obligation.

**Section 30. Assets subject to depreciation — transfer from income to principal of portion of net cash receipts.** (1) For purposes of this section, “depreciation” means a reduction in value due to wear, tear, decay, corrosion, or gradual obsolescence of a fixed asset having a useful life of more than 1 year.

(2) A trustee may transfer from income to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation, under generally accepted accounting principles, but may not transfer any amount for depreciation under this section in any of the following circumstances:

(a) as to the portion of real property used or available for use by a beneficiary as a residence or of tangible personal property held or made available for the personal use or enjoyment of a beneficiary;

(b) during the administration of a decedent’s estate; or

(c) if the trustee is accounting under [section 15] for the business or activity in which the asset is used.

(3) An amount transferred from income to principal need not be held as a separate fund.

**Section 31. Transfer from income to principal in anticipation of principal disbursement.** (1) If a trustee makes or expects to make a principal disbursement described in this section, the trustee may transfer an appropriate amount from income to principal in one or more accounting periods to reimburse principal or to provide a reserve for future principal disbursements.

(2) Principal disbursements to which subsection (1) applies include the following, but only to the extent that the trustee has not been and does not expect to be reimbursed by a third party:

(a) an amount chargeable to income but paid from principal because it is unusually large, including extraordinary repairs;

(b) a capital improvement to a principal asset, whether in the form of changes to an existing asset or the construction of a new asset, including special assessments;

(c) disbursements made to prepare property for rental, including tenant allowances, leasehold improvements, and broker’s commissions;

(d) periodic payments on an obligation secured by a principal asset to the extent that the amount transferred from income to principal for depreciation is less than the periodic payments; and

(e) disbursements described in [section 29(1)(g)].

(3) If the asset whose ownership gives rise to the disbursements becomes subject to a successive income interest after an income interest ends, a trustee may continue to transfer amounts from income to principal as provided in subsection (1).

**Section 32. Payment of taxes.** (1) A tax required to be paid by a trustee based on receipts allocated to income must be paid from income.

(2) A tax required to be paid by a trustee based on receipts allocated to principal must be paid from principal, even if the tax is called an income tax by the taxing authority.

(3) A tax required to be paid by a trustee on the trust's share of an entity's taxable income must be paid proportionately as follows:

(a) from income to the extent that receipts from the entity are allocated to income;

(b) from principal to the extent that both of the following apply:

(i) receipts from the entity are allocated to principal; and

(ii) the trust's share of the entity's taxable income exceeds the total receipts described in subsection (3)(a) and subsection (3)(b)(i).

(4) For purposes of this section, receipts allocated to principal or income must be reduced by the amount distributed to a beneficiary from principal or income for which the trust receives a deduction in calculating the tax.

**Section 33. Adjustments between principal and income in certain cases.** (1) A fiduciary may make adjustments between principal and income to offset the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries that arise from any of the following:

(a) elections and decisions, other than those described in subsection (2), that the fiduciary makes from time to time regarding tax matters;

(b) an income tax or any other tax that is imposed upon the fiduciary or a beneficiary as a result of a transaction involving or a distribution from the estate or trust; or

(c) the ownership by a decedent's estate or trust of an interest in an entity whose taxable income, whether or not distributed, is includable in the taxable income of the estate, trust, or a beneficiary.

(2) If the amount of an estate tax marital deduction or charitable contribution deduction is reduced because a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting it for estate tax purposes and as a result estate taxes paid from principal are increased and income taxes paid by a decedent's estate, trust, or beneficiary are decreased, each estate, trust, or beneficiary that benefits from the decrease in income tax shall reimburse the principal from which the increase in estate tax is paid. The total reimbursement must equal the increase in the estate tax to the extent that the principal used to pay the increase would have qualified for a marital deduction or charitable contribution deduction but for the payment. The proportionate share of the reimbursement for each estate, trust, or beneficiary whose income taxes are reduced must be the same as its proportionate share of the total decrease in income tax. An estate or trust shall reimburse principal from income.

**Section 34. Repealer.** Sections 72-34-401, 72-34-402, 72-34-403, 72-34-404, 72-34-405, 72-34-406, 72-34-407, 72-34-408, 72-34-409, 72-34-410, 72-34-411, 72-34-412, and 72-34-416, MCA, are repealed.

**Section 35. Codification instruction.** [Sections 1 through 33] are intended to be codified as an integral part of Title 72, chapter 34, and the provisions of Title 72, chapter 34, apply to [sections 1 through 33].

**Section 36. Coordination instruction.** If Senate Bill No. 230 is not passed and approved, then [section 4(1)(a) of this act] is void.

Approved April 25, 2003

## CHAPTER NO. 507

[SB 244]

AN ACT PROVIDING THAT A CONTRACT HOLDER OR EMPLOYEE OF A WATER USERS' ASSOCIATION THAT PAYS OPERATION OR MAINTENANCE COSTS ON A STATE-OWNED RESERVOIR MAY NOT BE REQUIRED TO PURCHASE A DAY-USE PERMIT TO ACCESS THAT RESERVOIR; REQUIRING THE ASSOCIATION TO ISSUE ANNUAL IDENTIFICATION CARDS TO ELIGIBLE CONTRACT HOLDERS AND EMPLOYEES OF WATER USERS' ASSOCIATIONS; AMENDING SECTION 23-1-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Identification of association contract holders and employees for free reservoir access.** A water users' association that chooses to participate as provided in 23-1-105(6) is responsible for issuing annual identification cards to its contract holders and employees in order to facilitate the identification by department of fish, wildlife, and parks enforcement personnel of persons who are eligible for free reservoir day use pursuant to 23-1-105(6). The identification card must be issued to the contract holder or employee of the water users' association and may not be transferred or assigned to another entity.

**Section 2.** Section 23-1-105, MCA, is amended to read:

**"23-1-105. Fees and charges.** (1) The department may levy and collect reasonable fees or other charges for the use of privileges and conveniences that may be provided and to grant concessions that it considers advisable, except as provided in ~~subsection~~ subsections (2) and (6). All money derived from the activities of the department, except as provided in subsection (5), must be deposited in the state treasury in a state special revenue fund to the credit of the department.

(2) Overnight camping fees established by the department under subsection (1) must be discounted 50% for a campsite rented by a person who is a resident of Montana, as defined in 87-2-102, and either 62 years of age or older or certified as disabled in accordance with rules adopted by the department.

(3) For a violation of any fee collection rule involving a vehicle, the registered owner of the vehicle at the time of the violation is personally responsible if an adult is not in the vehicle at the time the violation is discovered by an authorized officer. A defense that the vehicle was driven into the fee area by another person is not allowable unless it is shown that at that time, the vehicle was being used without the consent of the registered owner.

(4) Money received from the collection of fees and charges is not subject to the deposit requirements of 17-6-105. The department shall deposit money collected under this section within a reasonable time after receipt.

(5) There is a fund of the enterprise fund type, as defined in 17-2-102(1)(b)(i), for the purpose of managing state park visitor services revenue. The fund is to be



used by the department to serve the recreating public by providing for the obtaining of inventory through purchase, production, or donation and for the sale of educational, commemorative, and interpretive merchandise and other related goods and services at department sites and facilities. The fund consists of money from the sale of educational, commemorative, and interpretive merchandise and other related goods and services and from donations. Gross revenue from the sale of educational, commemorative, and interpretive merchandise and other related goods and services must be deposited in the fund. All interest and earnings on money deposited in the fund must be credited to the fund for use as provided in this subsection.

(6) *A contract holder or employee of a water users' association regulated pursuant to Title 85, chapter 6, that is paying operation or maintenance costs on a state-owned reservoir may not be required to purchase any day-use permit to access the reservoir for which operation or maintenance costs are paid by the association if the contract holder or employee of the water users' association holds an identification card as provided in [section 1]. A water users' association contract holder or employee who wishes to access the reservoir for purposes other than day use is required to pay any applicable fees. The water users' association is responsible for issuing annual identification cards pursuant to [section 1].*"

**Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 85, chapter 6, part 1, and the provisions of Title 85, chapter 6, part 1, apply to [section 1].

**Section 4. Coordination instruction.** If Senate Bill No. 336 and [this act] are both passed and approved, then [this act] is void.

**Section 5. Effective date.** [This act] is effective on passage and approval.

Approved April 25, 2003

## CHAPTER NO. 508

[SB 246]

AN ACT REVISING THE LAWS RELATED TO THE ANNEXATION OF PROPERTY INCLUDED IN A FIRE SERVICE AREA; REQUIRING A BOARD OF COUNTY COMMISSIONERS TO ALTER THE BOUNDARIES OF A FIRE SERVICE AREA TO EXCLUDE AN AREA THAT IS ANNEXED; REQUIRING THAT AN ANNEXING MUNICIPALITY BE NOTIFIED IN ORDER TO PREVENT THE PROPERTY OWNERS OF THE AREA TO BE ANNEXED FROM ASSUMING FINANCIAL RESPONSIBILITY TO BOTH THE MUNICIPALITY AND THE FIRE SERVICE AREA; AND AMENDING SECTIONS 7-33-2401 AND 7-33-2404, MCA.

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

**Section 1.** 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 and written notice as provided in 7-1-2122;

(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) 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 ~~same procedures required for the creation of a fire service area~~ *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).* 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.”

**Section 2.** Section 7-33-2404, MCA, is amended to read:

**“7-33-2404. Financing of fire service area — fee on structures.** (1) In the resolution creating the fire service area and by resolution as necessary after creation of the fire service area, the board of county commissioners shall establish a schedule of rates to be charged *to* owners of structures that are benefited by the services offered by the fire service area.

(2) The rates must be applied on a fair and equal basis to all classes of structures benefited by the fire service area.

(3) The board of county commissioners shall collect the funds necessary to operate the fire service area by charging the area rate as a special assessment on the owners of structures and shall collect the assessments with the general taxes of the county. The assessments are a lien on the assessed property.

(4) The board of county commissioners or the trustees, if the fire service area is governed by trustees under 7-33-2403, may pledge the income of the fire service area to secure financing necessary to procure equipment and buildings to house the equipment. The outstanding amount of the indebtedness may not exceed 1.1% of the total assessed value of taxable property, determined as provided in 15-8-111, within the area, as ascertained by the last assessment for state and county taxes prior to the incurring of the indebtedness.

(5) *If a fire service area is reduced or eliminated by annexation of all or a portion of the fire service area into a municipality, then the county commissioners or trustees of the fire service area shall notify the annexing municipality in order to prevent the property owners of the area to be annexed from assuming financial responsibility to both the municipality and the fire service area.*

**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].

Approved April 25, 2003

## CHAPTER NO. 509

[SB 247]

AN ACT ESTABLISHING A DEFAULT ELECTRICITY SUPPLY PROCUREMENT PROCESS; REQUIRING THE PUBLIC SERVICE COMMISSION TO ADOPT RULES THAT ESTABLISH CRITERIA THAT GUIDE THE DEFAULT ELECTRICITY SUPPLY PROCUREMENT PROCESS; PROVIDING OBJECTIVES FOR THE DEFAULT SUPPLIER FOR DEFAULT SUPPLY PLANNING, PORTFOLIO MANAGEMENT, AND RESOURCE PROCUREMENT; REQUIRING THE DEFAULT SUPPLIER TO DEVELOP A PROCUREMENT PLAN; ESTABLISHING REQUIREMENTS FOR COMMENT BY THE PUBLIC AND THE COMMISSION ON A DEFAULT SUPPLIER PROCUREMENT PLAN; PROVIDING A PROCESS FOR DEFAULT SUPPLY PROCUREMENT FILINGS AND COMMISSION APPROVAL; REQUIRING THE COMMISSION TO ESTABLISH AN ELECTRICITY COST RECOVERY MECHANISM FOR PRUDENTLY INCURRED ELECTRICITY SUPPLY COSTS; REQUIRING THE COMMISSION TO REQUIRE THE DEFAULT SUPPLIER TO OFFER MULTIPLE SERVICE OPTIONS; REQUIRING THE DEFAULT SUPPLIER TO OFFER ITS CUSTOMERS THE OPTION OF PURCHASING A PRODUCT COMPOSED OF CERTIFIED ENVIRONMENTALLY PREFERRED RESOURCES; AMENDING SECTIONS 69-1-114 AND 69-8-210, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

**Section 1. Default supply resource planning and procurement — duties of default supplier — objectives — commission rules.** (1) The default supplier shall:

- (a) plan for future default supply resource needs;
- (b) manage a portfolio of default supply resources; and
- (c) procure new default supply resources when needed.

(2) The default supplier shall pursue the following objectives in fulfilling its duties pursuant to subsection (1):

- (a) provide adequate and reliable default supply services at the lowest long-term total cost;

(b) conduct an efficient default supply resource planning and procurement process that evaluates the full range of cost-effective electricity supply and demand-side management options;

(c) identify and cost-effectively manage and mitigate risks related to its obligation to provide default electricity supply service;

(d) use open, fair, and competitive procurement processes whenever possible; and

(e) provide default supply services at just and reasonable rates.

(3) By December 31, 2003, the commission shall adopt rules that guide the default supply resource planning and procurement processes used by the default supplier and facilitate the achievement of the objectives in subsection (2) by the default supplier. The rules must establish:

(a) goals, objectives, and guidelines that are consistent with the objectives in subsection (2) for:

(i) planning for future default supply resource needs;

(ii) managing the portfolio of default supply resources; and

(iii) procuring new default supply resources;

(b) standards for the evaluation by the commission of the reasonableness of a power supply purchase agreement proposed by the default supplier; and

(c) minimum filing requirements for an application by the default supplier for advanced approval of a proposed power supply purchase agreement.

**Section 2. Default supply resource procurement plans — comment on plans.** (1) The default supplier shall develop default supply resource procurement plans. The plans must be submitted to the commission at intervals determined in rules adopted by the commission pursuant to [section 1].

(2) A default supply resource procurement plan must demonstrate the default supplier's achievement of the objectives provided in [section 1] and compliance with the rules adopted pursuant to [section 1].

(3) The commission shall:

(a) review the default supply resource procurement plan;

(b) provide an opportunity to the public to comment on the plan; and

(c) issue written comments that identify:

(i) any concerns of the commission regarding the default supplier's compliance with the rules adopted pursuant to [section 1]; and

(ii) ways to remedy any concerns.

**Section 3. Default supply filings — commission processing and approval.** (1) A default supplier may apply to the commission for advanced approval of a power supply purchase agreement that is:

(a) not executed; or

(b) executed with a provision that allows termination of the agreement if the commission does not find the agreement reasonable.

(2) (a) The commission shall issue an order on the default supplier's application for advanced approval of a power supply purchase agreement in a timely manner as provided in this subsection (2).

(b) In establishing an administrative procedure for reviewing an application for advanced approval, the commission shall consider any financing and market constraints and the due process rights of affected persons.

(c) Within 45 days of the default supplier's submission of an application for advanced approval, the commission shall determine whether or not the application is adequate and in compliance with the commission's minimum filing requirements. If the commission determines that the application is inadequate, it shall explain how the filing fails to comply with the objectives in [section 1] and the rules adopted pursuant to [section 1].

(d) The commission shall issue an order within 180 days of receipt of an adequate application unless it determines that extraordinary circumstances require additional time.

(e) To facilitate timely consideration of an application, the commission may initiate proceedings to evaluate planning and procurement activities related to a potential resource procurement prior to the default supplier's submission of an application for approval.

(3) (a) The commission may approve or deny, in whole or in part, an application for advanced approval of a power supply purchase agreement.

(b) The commission may consider all relevant information known up to the time that the administrative record in the proceeding is closed in the evaluation of an application for advanced approval of a power supply purchase agreement.

(c) A commission order granting advanced approval of a power supply purchase agreement must include the following findings:

(i) advanced approval of all or part of the agreement is in the public interest;

(ii) the agreement resulted from a reasonable effort by the default supplier to comply with the objectives in [section 1] and the rules adopted pursuant to [section 1]; and

(iii) the price, quantity, duration, and other contract terms directly related to the price, quantity, and duration of the power supply purchase agreement are reasonable.

(d) The commission order may include other findings that the commission determines are necessary.

(e) A commission order that denies advanced approval must describe why the findings required in subsection (3)(c) could not be reached.

(4) Notwithstanding any provision of this chapter to the contrary, if the commission has issued an order containing the findings required under subsection (3)(c), the commission may not subsequently disallow the recovery of costs incurred under the agreement based on contrary findings.

(5) If a default supplier does not apply for advanced approval of a power supply purchase agreement, the commission shall consider the prudence of the default supplier's resource procurement actions in the context of a default supplier's cost recovery filing pursuant to 69-8-210 or in a separate proceeding. The commission's decisions in these proceedings must be based on facts that were known or should reasonably have been known by the default supplier at the time of its procurement decisions.

(6) Nothing limits the commission's ability to subsequently, in any future cost recovery proceeding, inquire into the manner in which the default supplier has managed a power supply purchase agreement as part of its overall portfolio.

The commission may subsequently disallow default supply costs that result from the failure of a default supplier to reasonably administer power supply purchase agreements in the context of its overall default supply portfolio management and service obligations.

(7) The commission may engage independent consultants or advisory services to evaluate a utility's default supply resource procurement plans and proposed power supply purchase agreements. The consultants must have demonstrated knowledge and experience with electricity supply procurement and resource portfolio management, modeling, and risk management practices. The commission shall charge a fee to the default supplier to pay for the costs of consultants or advisory services. These costs are recoverable in default supply rates.

**Section 4.** Section 69-1-114, MCA, is amended to read:

**"69-1-114. Fees.** (1) Each fee charged by the commission must be commensurate with the costs incurred in administering the function for which the fee is charged except those fees set by federal statute.

(2) ~~No~~ Except for a fee assessed pursuant to [section 3(7)], no fee set by the commission may exceed \$500.

(3) All fees collected by the department under [section 3(7)] must be deposited in an account in the special revenue fund. Funds in this account must be used as provided in [section 3(7)]."

**Section 5.** Section 69-8-210, MCA, is amended to read:

**"69-8-210. Public utilities — electricity supply.** (1) ~~On the effective date of a commission order implementing a public utility's transition plan pursuant to 69-8-202, the public utility shall remove its generation assets from the rate base.~~

~~(2) During the transition period, the commission may establish cost based prices for electricity supply service for customers that do not have a choice of electricity supply service or that have not yet chosen an electricity supplier.~~

~~(3) If the transition period is extended, then the customers' distribution services provider shall:~~

~~(a) extend any cost based contract with the distribution services provider's affiliate supplier for a term of not more than 3 years; or~~

~~(b) purchase electricity from the market; and~~

~~(c) use a mechanism that recovers electricity supply costs in rates to ensure that those costs are fully recovered. (1) A public utility's distribution services provider shall provide default supply service.~~

(2) The commission shall establish an electricity cost recovery mechanism that allows a default supplier to fully recover prudently incurred electricity supply costs, subject to the provisions of [sections 1 and 2]. The cost recovery mechanism must provide for prospective rate adjustments for cost differences resulting from cost changes, load changes, and the time value of money on the differences.

(3) The commission may direct a default supplier to offer its customers multiple default supply service options if the commission determines that those options are in the public interest and are consistent with the provisions of 69-8-104 and 69-8-201.

(4) *Notwithstanding any service options that the commission may require pursuant to subsection (3), a default supplier shall offer its customers the option of purchasing a product composed of or supporting power from certified environmentally preferred resources that include but are not limited to wind, solar, geothermal, and biomass, subject to review and approval by the commission. The commission shall ensure that these resources have been certified as meeting industry-accepted standards.*

~~(4)~~(5) If a public utility intends to be an electricity supplier through an unregulated division, then the public utility must be licensed as an electricity supplier pursuant to 69-8-404.”

**Section 6. Codification instruction.** [Sections 1 through 3] are intended to be codified as an integral part of Title 69, chapter 8, part 4, and the provisions of Title 69, chapter 8, part 4, apply to [sections 1 through 3].

**Section 7. Coordination instruction.** If [this act] and House Bill No. 509 are both passed and approved, then [section 14 of House Bill No. 509], amending 69-8-210, is void.

**Section 8. Effective date.** [This act] is effective on passage and approval.

**Section 9. Applicability.** [Sections 1 through 3] apply only to power supply purchase agreements for which the procurement process begins on or after [the effective date of this act].

Approved April 24, 2003

## CHAPTER NO. 510

[SB 275]

AN ACT GENERALLY REVISING LAWS FOR THE COLLECTION OF JUDGMENTS AND FINES; REQUIRING THAT COLLECTION FEES BE ADDED TO THE AMOUNT OF THE JUDGMENT OR FINE BEING COLLECTED; INCREASING THE LENGTH OF A JUDGMENT LIEN FILED IN ANOTHER COUNTY AND A JUDGMENT LIEN RENDERED IN FEDERAL COURT FROM 6 YEARS TO 10 YEARS; REQUIRING EARNINGS WITHHELD FROM A JUDGMENT DEBTOR TO BE REMITTED TO THE SHERIFF OR LEVYING OFFICER WITHIN 5 DAYS OF THE DAY THE EARNINGS ARE WITHHELD; PROVIDING THAT FEES ASSESSED IN A MUNICIPAL COURT MAY NOT EXCEED THOSE FEES ASSESSED BY A JUSTICE'S COURT; EXPANDING THE LIABILITY FOR ISSUING A BAD CHECK TO INCLUDE A CONVERTED CHECK AND AN ELECTRONIC FUND TRANSFER; PROVIDING THAT MONEY PAID UNDER TITLE 53 TO PROVIDERS OF GOODS AND SERVICES IS NOT EXEMPT FROM LEVY OR OTHER LEGAL PROCEEDINGS; AND AMENDING SECTIONS 3-10-601, 25-9-302, 25-9-303, 25-13-402, 25-30-102, 27-1-717, 46-17-303, 46-19-102, AND 53-2-607, MCA.

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

**Section 1.** Section 3-10-601, MCA, is amended to read:

**“3-10-601. Collection and disposition of fines, penalties, forfeitures, and fees.** (1) Each justice's court shall collect the fees prescribed by law for justices' courts and shall pay them into the county treasury of the county in

which the justice of the peace holds office, on or before the 10th day of each month, to be credited to the general fund of the county.

(2) Except as provided in subsection (4), all fines, penalties, and forfeitures that are required to be imposed, collected, or paid in a justice's court must, for each calendar month, be paid by the justice's court on or before the 5th day of the following month to the treasurer of the county in which the justice's court is situated, except that they may be distributed as provided in 44-12-206 if imposed, collected, or paid for a violation of Title 45, chapter 9 or 10.

(3) Except as provided in 46-18-236(7), the county treasurer shall, as provided in 15-1-504, distribute money received under subsection (2) as follows:

(a) 50% to the department of revenue for deposit in the state general fund; and

(b) 50% to the county general fund.

(4) (a) The justice's court may contract with a private person or entity for the collection of any final judgment that requires a payment to the justice's court.

(b) In the event that a private person or entity is retained to collect a judgment, the justice's court may assign the judgment to the private person or entity and the private person or entity may, as an assignee, institute a suit or other lawful collection procedure and other postjudgment remedies in its own name.

(c) The justice's court may pay the private person or entity a reasonable fee for collecting the judgment. *The fee incurred by the justice's court must be added to the judgment amount.*"

**Section 2.** Section 25-9-302, MCA, is amended to read:

**"25-9-302. Filing of transcript of docket in another county — lien — expiration.** (1) A transcript of the original docket, certified by the clerk, may be filed with the district court clerk of any other county. From the time of the filing, the judgment becomes a lien upon all real property of the judgment debtor that is not exempt from execution in that county and that is either owned by the judgment debtor at the time or afterward acquired by the judgment debtor before the lien expires. Except as provided in subsection (2), the lien continues for ~~6~~ 10 years unless the judgment is previously satisfied.

(2) When the judgment is for the payment of child support, the lien continues for 10 years from the termination of the support obligation or 10 years from entry of a lump-sum judgment or order for support arrears, whichever is later, unless the judgment is previously satisfied."

**Section 3.** Section 25-9-303, MCA, is amended to read:

**"25-9-303. Filing of transcript of docket of federal court — lien — expiration.** (1) A transcript of the original docket of a judgment that is rendered in the circuit or district court of the United States, ninth circuit, district of Montana, and that is certified by the clerk of court may be filed with the district court clerk of any county. From the time of the filing, the judgment becomes a lien upon all real property of the judgment debtor that is not exempt from execution in the county and that is either owned by the judgment debtor at the time or afterward acquired by the judgment debtor before the lien expires. Except as provided in subsection (2), the lien continues for ~~6~~ 10 years unless the judgment is previously satisfied.



(2) When the judgment is for the payment of child support, the lien continues for 10 years from the termination of the support obligation or 10 years from entry of a lump-sum judgment or order for support arrears, whichever is later, unless the judgment is previously satisfied.”

**Section 4.** Section 25-13-402, MCA, is amended to read:

**“25-13-402. How writ executed.** (1) (a) The sheriff or levying officer shall, subject to subsection (6), execute the writ against the property of the judgment debtor ~~no~~ not later than 120 days after receipt of the writ by:

(i) levying on a sufficient amount of property, if there is sufficient property;

(ii) collecting or selling the things in action; and

(iii) selling the other property and paying to the judgment creditor or the judgment creditor’s attorney as much of the proceeds as will satisfy the judgment.

(b) (i) If the third party is a corporation or other legal entity, service must be accomplished by personally serving the writ upon an officer or supervising employee of the entity or other department or person designated by the third party or by mail, as provided in subsection (1)(b)(ii).

(ii) Service by mail upon a corporation or other legal entity must be consented to in writing by the corporation or other legal entity and may be made by mailing a copy of the writ to an officer, supervising employee of the third party, or other department or person designated by the third party. If service is by mail, it must be accompanied by a notice that the officer or employee receiving the writ shall forward the writ to the person responsible for processing the levy for the third party if the officer or employee initially receiving the writ is not the proper party to process the levy. The writ ~~will~~ must be considered served on the date and time that the writ is received by the officer, supervising employee, or designee of the third party, but ~~no~~ not later than 5 business days after it is mailed.

(c) A levy under subsection (1)(b) is effective when the writ is served by personal service or by mail, as provided in subsection (1)(b)(ii).

(2) Any proceeds in excess of the judgment and accruing costs must be returned to the judgment debtor unless otherwise directed by the judgment or order of the court. When the sheriff or levying officer determines that there is more property of the judgment debtor than is sufficient to satisfy the judgment and accruing costs, the sheriff or levying officer shall levy only on the part of the property that the judgment debtor may indicate if the property indicated is sufficient to satisfy the judgment and costs.

(3) With respect to property held by a third party, including but not limited to banks, credit unions, and other financial institutions and those parties identified in 25-13-306, the third party shall respond to the levy based on the assets held at the time of levy. Response must be made within 10 business days following the date of the levy by delivering the assets or payments to the sheriff or levying officer.

(4) Except for perishable property, the sheriff or levying officer shall hold any property or money levied upon for 10 days, excluding weekends and holidays, following notification of execution upon the judgment debtor. After that time, the sheriff or levying officer may sell the property and pay the money to the judgment creditor.

(5) If the first levy is not sufficient to satisfy the writ, the sheriff or levying officer may levy, from time to time and as often as necessary, within the 120 days until the judgment is satisfied or the writ expires.

(6) (a) A levy upon the earnings of a judgment debtor continues in effect for 120 days or until the judgment is satisfied, whichever occurs first. The levy applies to earnings due on or after the date of service through the expiration of the writ. *Earnings withheld from a judgment debtor must be remitted to the sheriff or levying officer within 5 days of the day the earnings are withheld.*

(b) The sheriff or levying officer shall clearly mark the expiration date upon all served copies of the writ and notice.

(c) Except as provided in subsection (7), multiple levies served under this subsection (6) have priority according to the date and time of service upon the employer.

(d) The return of service on a levy upon the earnings of a judgment debtor is returned in the same manner provided for in 25-13-404.

(7) ~~Nothing in this~~ *This section is not intended to supersede any state or federal laws regarding priority that must be given to certain levies and executions.*

**Section 5.** Section 25-30-102, MCA, is amended to read:

**“25-30-102. Fees and fines — collection.** (1) (a) The fees and fines in municipal court must be the same as the fees and fines provided by law or ordinance, and except as provided in subsection (2), all fees and fines collected by the court must be paid into the city treasury.

(b) *Fees assessed in municipal court may not exceed the fees authorized to be paid to a justice’s court in 25-31-112.*

(2) (a) The municipal court may contract with a private person or entity for the collection of any final judgment that requires a payment to the municipal court. *The fee incurred by the municipal court must be added to the judgment.*

(b) In the event that a private person or entity is retained to collect a judgment, the municipal court may assign the judgment to the private person or entity and the private person or entity may, as an assignee, institute suit or other lawful collection procedure and other postjudgment remedies in its own name.

(c) The municipal court, after deducting the charges provided for in 46-18-236, may pay the private person or entity a reasonable fee for collecting the judgment.”

**Section 6.** Section 27-1-717, MCA, is amended to read:

**“27-1-717. Issuing a bad check, draft, converted check, electronic funds transfer, or order or stopping payment — civil liability.** (1) A person who issues a check, draft, *converted check, electronic funds transfer, or order* for the payment of money is liable for a service charge, as provided in subsection (2), or for damages in a civil action, as provided in subsection (3), to the payee to whom the check, draft, *converted check, electronic funds transfer, or order* is issued, or the payee’s assignee, if the check, draft, *converted check, electronic funds transfer, or order* is:

(a) dishonored for lack of funds or credit or because the issuer ~~has no~~ *does not have an account with the drawee; or*

(b) issued in partial or complete fulfillment of a valid and legally binding obligation and the issuer stops payment with the intent to fraudulently defeat a possessory lien or otherwise defraud the payee of the check.

(2) The person who issues the check, draft, *converted check*, *electronic funds transfer*, or order is liable to the payee or the payee's assignee for a service charge in a reasonable amount, not greater than \$30. The payee or the payee's assignee may waive the service charge. Demand for the service charge must be made in writing by the payee or the payee's assignee and mailed to the address shown on the check, draft, *converted check*, or order or to the issuer's last-known address. The demand must state that the issuer is required to pay the value of the check, draft, *converted check*, *electronic funds transfer*, or order and service charge and must state the service charge provided for in this section.

(3) The amount of damages awarded pursuant to subsection (1) must be an amount equal to the service charge plus the greater of \$100 or three times the amount for which the check, draft, *converted check*, *electronic funds transfer*, or order was issued. However, damages may not exceed the value of the check, draft, *converted check*, *electronic funds transfer*, or order by more than \$500.

(4) The remedy provided by subsection (3) is available only if:

(a) the payee or the payee's assignee has made the written demand required in subsection (2) not less than 10 days before commencing the action; and

(b) the issuer has failed to tender an amount of money equal to the amount demanded under subsection (2) prior to the commencement of the action.

(5) The remedy provided by this section:

(a) may be pursued notwithstanding the provisions of 27-1-312;

(b) may be pursued whether or not a criminal penalty is sought under 45-6-316 or any other statute providing a criminal penalty; and

(c) does not affect the obligation of the issuer provided for in 30-3-423 to pay the amount of the draft. However, in case of any inconsistency with the provisions of Title 30, chapter 3, the provisions of this section apply.

(6) Upon introduction by the payee or the payee's assignee of evidence sufficient to establish the fact of mailing as required under subsection (2), the failure to receive the written demand is not a defense to the action allowed under subsection (3).

(7) This section applies to all checks, drafts, *converted checks*, *electronic funds transfers*, and orders, including those electronically presented for payment.

(8) *Making partial payments of amounts owed under this section or entering into an agreement for paying in whole or in part amounts owed under this section does not waive any right that the payee or the payee's assignee may have under this section. Once a demand required under this section is made, the demand is not required to be repeated upon partial payment of amounts owed under this section.*

**Section 7.** Section 46-17-303, MCA, is amended to read:

**"46-17-303. Deposit of fines — collection.** (1) Except as provided in subsection (2), all fines imposed and collected by a city the court must be paid to the appropriate treasurer of the county, city, or town, as the case may be, within 30 days of receipt. The city judge shall file a copy of any receipt given for a

collected fine with the *appropriate* county, city, or town clerk, ~~as the case may be.~~

(2) (a) The ~~city~~ court may contract with a private person or entity for the collection of any final judgment that requires a payment to the ~~city~~ court.

(b) In the event that a private person or entity is retained to collect a judgment, the ~~city~~ court may assign the judgment to the private person or entity and the private person or entity may, as an assignee, institute suit or other lawful collection procedure and other postjudgment remedies in its own name.

(c) The ~~city~~ court, after deducting the charges provided for in 46-18-236, may pay the private person or entity a reasonable fee for collecting the judgment. *The fee incurred by the court must be added to the judgment amount.*

*(3) If the judgment is for a fine alone, execution may issue on the judgment for any unpaid interest accrued on the judgment, costs, and fees in collecting the fine as on a judgment in a civil case."*

**Section 8.** Section 46-19-102, MCA, is amended to read:

**"46-19-102. Execution of fine judgment.** (1) If the judgment is for a fine alone, execution may issue on the judgment, *any unpaid interest accrued on the judgment, and costs and fees incurred in collecting the judgment as on a judgment in a civil case.*

(2) If the judgment is for a fine and imprisonment until the fine is paid, the defendant must be committed to the custody of the proper officer and detained and allowed a credit for each day of incarceration as provided in 46-18-403.

(3) (a) *The court may contract with a private person or entity for the collection of any judgment.*

(b) *In the event that a private person or entity is retained to collect a judgment, the court may assign the judgment to the private person or entity and the private person or entity may, as an assignee, institute suit or other lawful collection procedures and postjudgment remedies in the private person's or entity's own name.*

(c) *The court, after deducting the charges provided for in 46-18-236, may pay the private person or entity a reasonable fee for collecting the judgment. The fee incurred by the court must be added to the judgment amount."*

**Section 9.** Section 53-2-607, MCA, is amended to read:

**"53-2-607. Assistance not assignable or subject to legal process — exceptions.** (1) Except as otherwise provided in this title, assistance granted to a needy person under this title is not transferable or assignable at law or in equity and none of the money paid or payable under this title is subject to execution, levy, attachment, garnishment, or other legal process or to the operation of any bankruptcy or insolvency law.

(2) *Money paid or payable under this title to a person or entity who is not a needy person but who receives the money for providing goods or services to a needy person is subject to execution, levy, attachment, garnishment, or other legal process."*

Approved April 25, 2003

**CHAPTER NO. 511**

[SB 294]

AN ACT REVISING THE INTEREST RATE APPLIED TO THE REFUND OF PROPERTY TAXES OR FEES PAID UNDER PROTEST; PROVIDING THAT THE STATE SHARE OF PROTESTED PROPERTY TAXES OF CENTRALLY ASSESSED PROPERTY MUST BE REMITTED TO THE STATE TREASURER; PROVIDING THAT A GOVERNING BODY OF A TAXING JURISDICTION MAY ACCESS PROTESTED PROPERTY TAXES OF CENTRALLY ASSESSED PROPERTY; REQUIRING THE STATE TREASURER TO REFUND THE STATE SHARE OF PROTESTED PROPERTY TAXES OF CENTRALLY ASSESSED PROPERTY; AMENDING SECTION 15-1-402, 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 15-1-402, MCA, is amended to read:

**"15-1-402. Payment of taxes under protest.** (1) The person upon whom a property tax or fee is being imposed under this title may, before the property tax or fee becomes delinquent, pay under written protest that portion of the property tax or fee protested. The protested payment must:

- (a) be made to the officer designated and authorized to collect it;
- (b) specify the grounds of protest; and

(c) not exceed the difference between the payment for the immediately preceding tax year and the amount owing in the tax year protested unless a different amount results from the specified grounds of protest, which may include but are not limited to changes in assessment due to reappraisal under 15-7-111.

(2) A person appealing a property tax or fee pursuant to chapter 2 or 15 shall pay the tax or fee under protest when due in order to receive a refund. If the tax or fee is not paid under protest when due, the appeal may continue but a tax or fee may not be refunded as a result of the appeal.

(3) If a protested property tax or fee is payable in installments, a subsequent installment portion considered unlawful by the state tax appeal board need not be paid and an action or suit need not be commenced to recover the subsequent installment. The determination of the action or suit commenced to recover the first installment portion paid under protest determines the right of the party paying the subsequent installment to have it or any part of it refunded to the party or the right of the taxing authority to collect a subsequent installment not paid by the taxpayer plus interest from the date the subsequent installment was due.

(4) ~~All~~ (a) *Except as provided in subsection (4)(b), all* property taxes and fees paid under protest to a county or municipality must be deposited by the treasurer of the county or municipality to the credit of a special fund to be designated as a protest fund and must be retained in the protest fund until the final determination of any action or suit to recover the taxes and fees unless they are released at the request of the county, municipality, or other local taxing jurisdiction pursuant to subsection (5). This section does not prohibit the investment of the money of this fund in the state unified investment program or in any manner provided in Title 7, chapter 6. The provision creating the special

protest fund does not apply to any payments made under protest directly to the state.

*(b) (i) Property taxes that are levied by the state against property that is centrally assessed pursuant to 15-23-101 must be remitted by the county treasurer to the state treasurer.*

*(ii) The state treasurer shall deposit that portion of the funds levied pursuant to 15-10-107 in the state special revenue fund. The remainder of the funds must be deposited in the state general fund.*

~~(5) (a) The~~ Except as provided in subsection (5)(b), the governing board body of a taxing jurisdiction affected by the payment of taxes under protest ~~in the second and subsequent years that a tax protest remains unresolved in the second and subsequent years that a tax protest remains unresolved~~ may demand that the treasurer of the county or municipality pay the requesting taxing jurisdiction all or a portion of the protest payments to which it is entitled, ~~except the amount paid by the taxpayer in the first year of the protest, except the amount paid by the taxpayer in the first year of the protest.~~ The decision in a previous year of a taxing jurisdiction to leave protested taxes in the protest fund does not preclude it from demanding in a subsequent year any or all of the payments to which it is entitled, ~~except the first-year protest amount, except the first-year protest amount.~~

*(b) The governing body of a taxing jurisdiction affected by the payment of taxes under protest on property that is centrally assessed pursuant to 15-23-101 in the first and subsequent years that a tax protest remains unresolved may demand that the treasurer of the county or municipality pay the requesting taxing jurisdiction all or a portion of the protest payments to which it is entitled. The decision in a previous year of a taxing jurisdiction to leave protested taxes of centrally assessed property in the protest fund does not preclude it from demanding in a subsequent year any or all of the payments to which it is entitled.*

(6) (a) If action before the county tax appeal board, state tax appeal board, or district court is not commenced within the time specified or if the action is commenced and finally determined in favor of the department of revenue, county, municipality, or treasurer of the county or the municipality, the amount of the protested portions of the property tax or fee must be taken from the protest fund and deposited to the credit of the fund or funds to which the property tax belongs, less a pro rata deduction for the costs of administration of the protest fund and related expenses charged to the local government units.

~~(b) If the action is finally determined adversely to the department of revenue, a county, a municipality, or the treasurer of a county or a municipality, then the treasurer shall, upon receiving a certified copy of the final judgment in the action from the state tax appeal board or from the district or supreme court, as appropriate, if the final action of the state tax appeal board is appealed in the time prescribed, refund to the person in whose favor the judgment is rendered the amount of the protested portions of the property tax or fee deposited in the protest fund, and not released pursuant to subsection (5), as the person holding the judgment is entitled to recover, together with interest from the date of payment under protest, at the greater of:~~

~~(i) the rate of interest generated from the pooled investment fund provided for in 17-6-203 for the applicable period; or~~

~~(ii) 6% a year.~~

(b) (i) If the action is finally determined adversely to the governmental entity levying the tax, then the treasurer of the municipality, county, or state entity levying the tax shall, upon receipt of a certified copy of the final judgment in the action and upon expiration of the time set forth for appeal of the final judgment, refund to the person in whose favor the judgment is rendered the amount of the protested portions of the property tax or fee that the person holding the judgment is entitled to recover, together with interest from the date of payment under protest.

(ii) The taxing jurisdiction shall pay interest at the rate of interest earned by the pooled investment fund provided for in 17-6-203 for the applicable period.

(c) If the amount retained in the protest fund is insufficient to pay all sums due the taxpayer, the treasurer shall apply the available amount first to tax repayment, then to interest owed, and lastly to costs.

(d) (i) If the protest action is decided adversely to a taxing jurisdiction and the amount retained in the protest fund is insufficient to refund the tax payments and costs to which the taxpayer is entitled and for which local government units are responsible, the treasurer shall bill and the taxing jurisdiction shall refund to the treasurer that portion of the taxpayer refund, including tax payments and costs, for which the taxing jurisdiction is proratably responsible. *The treasurer is not responsible for the amount required to be refunded by the state treasurer as provided in subsection (6)(b).*

(ii) For an adverse protest action against the state for centrally assessed property, the state treasurer shall refund the amount of protested taxes and interest as required in subsection (6)(b).

(e) In satisfying the requirements of subsection (6)(d), the taxing jurisdiction, *including the state*, is allowed not more than ~~1 year~~ 1 year from the beginning of the fiscal year following a final resolution of the protest. The taxpayer is entitled to interest on the unpaid balance at the ~~greater of the rates~~ rate referred to in ~~subsections (6)(b)(i) and (6)(b)(ii)~~ subsection (6)(b) from the date of payment under protest until the date of final resolution of the protest and at the combined rate of the federal reserve discount rate quoted from the federal reserve bank in New York, New York, on the date of final resolution, plus ~~four~~ 4 percentage points, from the date of final resolution of the protest until refund is made.

(7) A taxing jurisdiction, *except the state*, may satisfy the requirements of this section by use of funds from one or more of the following sources:

(a) imposition of a property tax to be collected by a special tax protest refund levy;

(b) the general fund or any other funds legally available to the governing body; and

(c) proceeds from the sale of bonds issued by a county, city, or school district for the purpose of deriving revenue for the repayment of tax protests lost by the taxing jurisdiction. The governing body of a county, city, or school district is authorized to issue the bonds pursuant to procedures established by law. The bonds may be issued without being submitted to an election. Property taxes may be levied to amortize the bonds.

(8) If the department revises an assessment that results in a refund of taxes of \$5 or less, a refund is not owed."

**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 any tax appeal or tax paid under protest after October 31, 2000, except for refunds of property taxes made after October 31, 2000, and before [the effective date of this act].

Approved April 25, 2003

## CHAPTER NO. 512

[SB 344]

AN ACT REDUCING THE MINIMUM NONFORFEITURE AMOUNT TO 1.5 PERCENT A YEAR INTEREST FROM 3 PERCENT A YEAR INTEREST WITH RESPECT TO CERTAIN ANNUITY CONTRACTS PROVIDING FOR FLEXIBLE CONSIDERATIONS; AMENDING SECTION 33-20-505, 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.** Section 33-20-505, MCA, is amended to read:

**“33-20-505. Minimum nonforfeiture amounts.** (1) The minimum values as specified in 33-20-506 through 33-20-509 and 33-20-511 of any paid-up annuity, cash surrender, or death benefits available under an annuity contract ~~shall~~ *must* be based upon minimum nonforfeiture amounts, as defined in this section.

(2) (a) With respect to contracts providing for flexible considerations, the minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments ~~shall~~ *must* be equal to an accumulation up to ~~such that~~ time at a rate of interest of ~~3%~~ 1.5% a year of percentages of the net considerations ~~(as hereinafter defined)~~ paid prior to ~~such that~~ time, decreased by the sum of any prior withdrawals from or partial surrenders of the contract accumulated at a rate of interest of ~~3%~~ 1.5% a year and the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by existing additional amounts credited by the company to the contract.

(b) The net consideration for a given contract year used to define the minimum nonforfeiture amount ~~shall~~ *must* be an amount not less than zero and ~~shall~~ *must* be equal to the corresponding gross considerations credited to the contract during that contract year less an annual contract charge of \$30 and less a collection charge of \$1.25 ~~per~~ *for each* consideration credited to the contract during that contract year. The percentages of net consideration ~~shall~~ *must* be 65% of the net consideration for the first contract year and 87 1/2% of the net consideration for the second and later contract years. ~~Notwithstanding~~ *Regardless of* the provisions of the preceding sentence, the percentage ~~shall~~ *must* be 65% of the portion of the total net consideration for any renewal contract year ~~which that~~ exceeds by not more than two times the sum of those portions of the net consideration in all prior contract years for which the percentage was 65%.

(3) With respect to contracts providing for fixed schedule consideration, minimum nonforfeiture amounts ~~shall~~ *must* be calculated on the assumption that consideration is paid annually in advance and ~~shall~~ *must* be defined *in the*



*same manner* as for contracts with flexible payments of consideration ~~which~~ that are paid annually with two exceptions:

(a) The portion of the net consideration for the first contract year to be accumulated ~~shall~~ *must* be the sum of 65% of the net consideration for the first contract year plus 22 1/2% of the excess of the net consideration for the first contract year over the lesser of the net considerations for the second and third contract years.

(b) The annual contract charge ~~shall~~ *must* be the lesser of \$30 or 10% of the gross annual consideration.

(4) With respect to contracts providing for a single consideration, minimum nonforfeiture amounts ~~shall~~ *must* be defined *in the same manner* as for contracts with flexible payments of consideration, except that the percentage of net consideration used to determine the minimum nonforfeiture amounts ~~shall~~ *must* be equal to 90% and the net consideration ~~shall~~ *must* be the gross consideration less a contract charge of \$75."

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

**Section 3. Applicability.** [This act] applies to annuity contracts that are entered into on or after July 1, 2003.

**Section 4. Termination.** [This act] terminates July 1, 2005.

Approved April 24, 2003

## CHAPTER NO. 513

[SB 348]

AN ACT AUTHORIZING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO CONTRACT WITH AND REGULATE BEHAVIORAL HEALTH INPATIENT FACILITIES; ALLOWING THE MONTANA STATE HOSPITAL TO DIRECT THAT A PERSON WITH MENTAL DISORDERS WHO HAS BEEN INVOLUNTARILY COMMITTED TO THE STATE HOSPITAL BE TRANSFERRED TO A BEHAVIORAL HEALTH INPATIENT FACILITY WHEN A BED IS AVAILABLE; REVISING HEARING PROVISIONS FOR EXTENSION OF A COMMITMENT; PERMITTING A COUNTY ATTORNEY TO HAVE A PERSON WHO APPEARS TO HAVE A MENTAL DISORDER AND IS IN IMMINENT DANGER OF DEATH OR BODILY HARM TRANSPORTED TO A BEHAVIORAL HEALTH INPATIENT FACILITY IF A BED IS AVAILABLE; PERMITTING TRANSFER OF PERSONS SUFFERING FROM MENTAL DISORDERS TO BE DIVERTED FROM DETENTION CENTERS TO BEHAVIORAL HEALTH INPATIENT FACILITIES IF A BED IS AVAILABLE; AMENDING SECTIONS 53-21-102, 53-21-120, 53-21-127, 53-21-128, 53-21-129, AND 53-21-138, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1. Commitment to behavioral health inpatient facilities — preference.** (1) If a respondent is committed to the state hospital under 53-21-127 or a person in an emergency situation requires detention under 53-21-129 and a bed is available at a behavioral health inpatient facility, the Montana state hospital shall direct the person who is responsible for

transporting the individual to the appropriate facility to which the person shall transport the individual for admission.

(2) If a respondent is committed to or an individual requires emergency detention in a behavioral health inpatient facility, the facility must be notified and the facility shall state that a bed is available and agree to accept transfer of the patient based on admission criteria before an individual may be transferred to the behavioral health inpatient facility under this section.

(3) A respondent who is committed to or an individual who is transferred to a behavioral health inpatient facility may be transferred to the state hospital for the remaining period of commitment in accordance with criteria established by the department by rule pursuant to [section 2]. A court order for commitment or transfer must include the transfer authority, and all conditions contained in the court order apply after a transfer.

(3) The court may not order commitment of the respondent or transfer of an individual to a behavioral health inpatient facility under this part if a bed is not available or if the licensed capacity would be exceeded.

**Section 2. Department contract with behavioral health inpatient facilities — rulemaking authority — rates and transfer criteria.** (1) The department may contract with one or more behavioral health inpatient facilities to provide inpatient psychiatric care to persons involuntarily committed or detained under this title.

(2) The department shall adopt rules:

(a) governing the number, geographic distribution, capacity, and qualifications of behavioral health inpatient facilities; and

(b) establishing criteria pursuant to subsection (3) for admission to a behavioral health inpatient facility or transfer of a patient from a behavioral health inpatient facility to the state hospital.

(3) The criteria for admission or transfer of an individual must reflect:

(a) individualized consideration of the patient's treatment needs and the safety of the public, including the prospects for the patient's successful transition to community care within the current period of commitment;

(b) the appropriateness of specialized programs or facilities at the state hospital; and

(c) the recommendations of the individual's treating professionals and state hospital staff.

(4) The department shall provide notice to the district courts of the designation of any mental health facility as a behavioral health inpatient facility, the facility's capacity, and the criteria for admission and transfer.

**Section 3.** Section 53-21-102, MCA, is amended to read:

**“53-21-102. Definitions.** As used in this part, 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 licensed facility of 16 beds or less designated by the department that:

(a) may be a freestanding licensed hospital or a distinct part of another licensed hospital and that is capable of providing inpatient psychiatric services, including services to persons with mental illness and co-occurring chemical dependency; and

(b) has contracted with the department to provide services to persons who have been involuntarily committed for care and treatment of a mental disorder pursuant to this title.

~~(2)~~(3) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

~~(3)~~(4) "Commitment" means an order by a court requiring an individual to receive treatment for a mental disorder.

~~(4)~~(5) "Court" means any district court of the state of Montana.

~~(5)~~(6) "Department" means the department of public health and human services provided for in 2-15-2201.

~~(6)~~(7) "Emergency situation" means 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.

~~(7)~~(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. The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, representatives of a charitable or religious organization, or any other person appointed by the court to perform the functions of a friend of respondent set out in this part. Only one person may at any one time be the friend of respondent within the meaning of this part. In appointing a friend of respondent, the court shall consider the preference of the respondent. The court may at any time, for good cause, change its designation of the friend of respondent.

~~(8)~~(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:

~~(a)~~(i) addiction to drugs or alcohol;

~~(b)~~(ii) drug or alcohol intoxication;

~~(c)~~(iii) mental retardation; or

~~(d)~~(iv) epilepsy.

~~(9)~~(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.

~~(10)~~ (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.

~~(11)~~ (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.

~~(12)~~ (13) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

~~(13)~~ (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.

~~(14)~~ (15) "Peace officer" means any sheriff, deputy sheriff, marshal, police officer, or other peace officer.

~~(15)~~ (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; or
- (c) a person who has been certified, as provided for in 53-21-106, by the department.

~~(16)~~ (17) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional person.

~~(17)~~ (18) "Respondent" means a person alleged in a petition filed pursuant to this part to be suffering from a mental disorder and requiring commitment.

~~(18)~~ (19) "State hospital" means the Montana state hospital."

**Section 4.** Section 53-21-120, MCA, is amended to read:

**"53-21-120. Detention to be in least restrictive environment — preference for mental health facility — court relief — prehearing detention of mentally ill person prohibited.** (1) A person detained pursuant to this part must be detained in the least restrictive environment required to protect the life and physical safety of the person detained or members of the public; in this respect, prevention of significant injury to property may be considered.

(2) Whenever possible, a person detained pursuant to this part must be detained in a mental health facility and in the county of residence. If the person detained demands a jury trial and *the* trial cannot be held within 7 days, *subject to the provisions in [section 1]*, the individual may be sent to the state hospital or a behavioral health inpatient facility until *the* time of trial if arrangements can be made to return ~~him~~ *the person* to trial. The trial must be held within 30 days. The county of residence shall pay the cost of travel and professional services associated with the trial. A person may not be detained in any hospital or other medical facility that is not a mental health facility unless the hospital or facility has agreed in writing to admit the person.

(3) A person may not be detained pursuant to this part in a jail or other correctional facility.

(4) A person detained prior to involuntary commitment may apply to the court for immediate relief with respect to the need for detention or the adequacy of the facility being utilized to detain.”

**Section 5.** Section 53-21-127, MCA, is amended to read:

**“53-21-127. Posttrial disposition.** (1) If, upon trial, it is determined that the respondent is not suffering from a mental disorder or does not require commitment within the meaning of this part, the respondent must be discharged and the petition dismissed.

(2) If it is determined that the respondent is suffering from a mental disorder and requires commitment within the meaning of this part, the court shall hold a posttrial disposition hearing. The disposition hearing must be held within 5 days (including Saturdays, Sundays, and holidays unless the fifth day falls on a Saturday, Sunday, or holiday), during which time the court may order further evaluation and treatment of the respondent.

(3) At the conclusion of the disposition hearing and pursuant to the provisions in subsection (7), the court shall:

(a) *subject to the provisions of [section 1]*, commit the respondent to the state hospital or to a behavioral health inpatient facility for a period of not more than 3 months; or

(b) commit the respondent to a community facility or program or to any appropriate course of treatment, which may include housing or residential requirements, for a period of not more than 6 months.

(4) Except as provided in subsection (3)(b), a treatment ordered pursuant to this section may not affect the respondent’s custody or course of treatment for a period of more than 3 months.

(5) In determining which of the alternatives in subsection (3) to order, the court shall choose the least restrictive alternatives necessary to protect the respondent and the public and to permit effective treatment.

(6) The court may authorize the chief medical officer of a facility or a physician designated by the court to administer appropriate medication involuntarily if the court finds that involuntary medication is necessary to protect the respondent or the public or to facilitate effective treatment. Medication may not be involuntarily administered to a patient unless the chief medical officer of the facility or a physician designated by the court approves it prior to the beginning of the involuntary administration and unless, if possible, a medication review committee reviews it prior to the beginning of the involuntary administration or, if prior review is not possible, within 5 working

days after the beginning of the involuntary administration. The medication review committee must include at least one person who is not an employee of the facility or program. The patient and the patient's attorney or advocate, if the patient has one, must receive adequate written notice of the date, time, and place of the review and must be allowed to appear and give testimony and evidence. The involuntary administration of medication must be again reviewed by the committee 14 days and 90 days after the beginning of the involuntary administration if medication is still being involuntarily administered. The mental disabilities board of visitors and the director of the department of public health and human services must be fully informed of the matter within 5 working days after the beginning of the involuntary administration. The director shall report to the governor on an annual basis.

(7) Satisfaction of any one of the criteria listed in 53-21-126(1) justifies commitment pursuant to this chapter. However, if the court relies solely upon the criterion provided in 53-21-126(1)(d), the court may require commitment only to a community facility or program or an appropriate course of treatment as provided in subsection (3)(b); and may not require commitment at the state hospital *or at a behavioral health inpatient facility*.

(8) In ordering commitment pursuant to this section, the court shall make the following findings of fact:

(a) a detailed statement of the facts upon which the court found the respondent to be suffering from a mental disorder and requiring commitment;

(b) the alternatives for treatment that were considered;

(c) the alternatives available for treatment of the respondent;

(d) the reason that any treatment alternatives were determined to be unsuitable for the respondent;

(e) the name of the facility, program, or individual to be responsible for the management and supervision of the respondent's treatment;

(f) if the order includes a requirement for inpatient treatment, the reason inpatient treatment was chosen from among other alternatives; and

(g) if the order includes involuntary medication, the reason involuntary medication was chosen from among other alternatives."

**Section 6.** Section 53-21-128, MCA, is amended to read:

**"53-21-128. Petition for extension of commitment period.** (1) (a) Not less than 2 calendar weeks prior to the end of the 3-month period of commitment to the state hospital *or a behavioral health inpatient facility* or the period of commitment to a community facility or program or a course of treatment provided for in 53-21-127, the professional person in charge of the patient at the place of commitment may petition the district court in the county where the patient is committed for extension of the commitment period unless otherwise ordered by the original committing court. The petition must be accompanied by a written report and evaluation of the patient's mental and physical condition. The report must describe any tests and evaluation devices that have been employed in evaluating the patient, the course of treatment that was undertaken for the patient, and the future course of treatment anticipated by the professional person.

(b) Upon the filing of the petition, the court shall give written notice of the filing of the petition to the patient, the patient's next of kin, if reasonably available, the friend of respondent appointed by the court, and the patient's

counsel. If any person notified requests a hearing prior to the termination of the previous commitment authority, the court shall immediately set a time and place for a hearing on a date not more than 10 days, *not including Saturdays, Sundays, and holidays*, from the receipt of the request and notify the same people, including the professional person in charge of the patient. *When a hearing is requested less than 10 days prior to the termination of the previous commitment authority, the previous commitment is considered extended until the hearing is held. The notice of hearing must include a notice of this extension.* If a hearing is not requested, the court shall enter an order of commitment for a period not to exceed 6 months.

(c) Procedure on the petition for extension when a hearing has been requested must be the same in all respects as the procedure on the petition for the original 3-month commitment, except *that* the patient is not entitled to a trial by jury. The hearing must be held in the district court having jurisdiction over the facility in which the patient is detained unless otherwise ordered by the court. Court costs and witness fees, if any, must be paid by the county that paid the same costs in the initial commitment proceedings.

(d) If upon the hearing the court finds the patient not to be suffering from a mental disorder and requiring commitment within the meaning of this part, the patient must be discharged and the petition dismissed. If the court finds that the patient continues to suffer from a mental disorder and to require commitment, the court shall order commitment as set forth in 53-21-127(3). However, an order *extending the commitment period* may not affect the patient's custody for more than 6 months *and may not commit the patient to a behavioral health inpatient facility*. In its order, the court shall describe what alternatives for treatment of the patient are available, what alternatives were investigated, and why the investigated alternatives were not found suitable. The court may not order continuation of an alternative that does not include a comprehensive, individualized plan of treatment for the patient. A court order for the continuation of an alternative must include a specific finding that a comprehensive, individualized plan of treatment exists.

(2) Prior to the end of the period of commitment to a community facility or program or course of treatment, a respondent may request that the treating provider petition the district court for an extension of the commitment order. The petition must be accompanied by a written report and evaluation of the respondent's mental and physical condition, an updated treatment plan, and a written statement by the respondent that an extension is desired. The extension procedure must follow the procedure required in subsections (1)(b) through (1)(d).

(3) Further extensions under subsection (1) or (2) may be obtained under the same procedure described in subsection (1). However, the patient's custody may not be affected for more than 1 year without a renewal of the commitment under the procedures set forth in subsection (1), including a statement of the findings required by subsection (1)."

**Section 7.** Section 53-21-129, MCA, is amended to read:

**"53-21-129. Emergency situation — petition — detention.** (1) When an emergency situation exists, a peace officer may take any person who appears to have a mental disorder and to present an imminent danger of death or bodily harm to the person or to others into custody only for sufficient time to contact a professional person for emergency evaluation. If possible, a professional person should be called prior to taking the person into custody.

(2) If the professional person agrees that the person detained is a danger to the person or to others because of a mental disorder and that an emergency situation exists, then the person may be detained and treated until the next regular business day. At that time, the professional person shall release the detained person or file findings with the county attorney who, if the county attorney determines probable cause to exist, shall file the petition provided for in 53-21-121 through 53-21-126 in the county of the respondent's residence. In either case, the professional person shall file a report with the court explaining the professional person's actions.

(3) The county attorney of a county may make arrangements with a federal, state, regional, or private mental facility or with a mental health facility in a county for the detention of persons held pursuant to this section. If an arrangement has been made with a facility that does not, at the time of the emergency, have a bed available to detain the person at that facility, the person may be transported to the state hospital *or to a behavioral health inpatient facility, subject to [section 1] and subsection (4) of this section*, for detention and treatment as provided in this part. This determination must be made on an individual basis in each case, and the professional person at the local facility shall certify to the county attorney that the facility does not have adequate room at that time.

(4) ~~However, before~~ *Before a person is may be transferred to the state hospital or to a behavioral health inpatient facility under this section, the state hospital or the behavioral health inpatient facility must be notified prior to transfer and shall state that whether a bed is available for the person. If the Montana state hospital determines that a behavioral health inpatient facility is the appropriate facility for the emergency detention, it shall direct the person to the appropriate facility to which the person must be transported for emergency detention.*

**Section 8.** Section 53-21-138, MCA, is amended to read:

**“53-21-138. Diversion of certain persons suffering from mental disorders from detention center.** (1) The sheriff or administrator of a detention center in each county shall require screening of inmates to identify persons accused of minor misdemeanor offenses who appear to be suffering from mental disorders and who may require commitment, as defined in 53-21-102.

(2) If as a result of screening and observation it is believed that an inmate is suffering from a mental disorder and may require commitment, the sheriff or administrator of the detention center shall:

(a) request services from a crisis intervention program established by the department, as provided for in 53-21-139;

(b) refer the inmate to the nearest community mental health center, as defined in 53-21-201; or

(c) *subject to [section 1] and subsection (3) of this section*, transfer the inmate to a private mental health facility, a *behavioral health inpatient facility*, or a hospital equipped to provide treatment and care of persons who are suffering from a mental disorder and who require commitment.

(3) *The facility must be notified, and the facility shall state that a bed is available and agree to accept transfer of the patient based on admission criteria before a person may be transferred under this section.*

~~(3)~~(4) As used in this section, the term “minor misdemeanor offense” includes but is not limited to a nonserious misdemeanor, such as criminal



trespass to property, loitering, vagrancy, disorderly conduct, and disturbing the public peace.

(4)(5) A person intoxicated by drugs or alcohol who is accused of a minor misdemeanor offense may be detained in a jail until the level of intoxication is reduced to the point that screening for a mental disorder and the need for commitment can be performed.”

**Section 9. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 53, chapter 21, part 1, and the provisions of Title 53, chapter 21, part 1, apply to [sections 1 and 2].

**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 July 1, 2003.

Approved April 25, 2003

## CHAPTER NO. 514

[SB 386]

AN ACT ELIMINATING THE APPLICABILITY OF THE MONTANA MAJOR FACILITY SITING ACT TO CERTAIN PIPELINES AND ASSOCIATED FACILITIES; AMENDING SECTION 17, CHAPTER 293, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

WHEREAS, prior to 2001, the Montana Major Facility Siting Act applied to pipelines greater than 17 inches in inside diameter; and

WHEREAS, Chapter 293, Laws of 2001, amended the Montana Major Facility Siting Act so as to apply to those pipelines greater than 25 inches in inside diameter; and

WHEREAS, the applicability clause of Chapter 293, Laws of 2001, excluded pipelines 25 inches or less in inside diameter that were subject to a certificate of environmental compatibility on the day before the effective date of Chapter 293, Laws of 2001; and

WHEREAS, there is not any regulatory reason to continue the application of the Montana Major Facility Siting Act with respect to any pipeline 25 inches or less in inside diameter regardless of whether a pipeline was subject to a certificate of environmental compatibility issued under the Montana Major Facility Siting Act on or before April 19, 2001, and to do so would be to discriminate without reason between pipelines of the same or similar diameter; and

WHEREAS, the Legislature finds that it is appropriate to amend the applicability clause of Chapter 293, Laws of 2001, to make the substantive provisions of Chapter 293, Laws of 2001, apply to all pipelines 25 inches or less in inside diameter and to exempt from the Montana Major Facility Siting Act all, rather than some, pipelines 25 inches or less in inside diameter.

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

**Section 1.** Section 17, Chapter 293, Laws of 2001, is amended to read:

**“Section 17. Applicability.** ~~This~~ Subject to [section 3 of Senate Bill No. 386, 2003], [this act] does not apply to any facility or associated facility under 75-20-104(8)(a), (8)(b), ~~(8)(d)~~, or (8)(f), as those subsections read on the day before [the effective date of this act], that was subject to a certificate of environmental compatibility on [the effective date of this act].”

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

**Section 3. Applicability.** Section 17, Chapter 293, Laws of 2001, and [section 1 of this act] do not apply to reclamation bonds for pipelines and associated facilities held by the board of environmental review or the department of environmental quality until October 30, 2004.

Approved April 25, 2003

## CHAPTER NO. 515

[SB 387]

AN ACT CONFORMING THE RETAIL TELECOMMUNICATIONS EXCISE TAX TO THE FEDERAL MOBILE TELECOMMUNICATIONS SOURCING ACT OF 2000 AND AN AGREEMENT AMONG STATES FOR SOURCING OF OTHER TELECOMMUNICATIONS SERVICES; AMENDING SECTIONS 15-53-129 AND 15-53-130, MCA; AND PROVIDING AN EFFECTIVE DATE, AN APPLICABILITY DATE, AND A CONTINGENT TERMINATION DATE.

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

**Section 1.** Section 15-53-129, MCA, is amended to read:

**“15-53-129. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) *“Call-by-call basis” means any method of charging for telecommunications services that measures the price by individual calls.*

(2) (a) *“Charges for mobile telecommunications services” means any charge for, or associated with, the provision of commercial mobile radio service, as defined in 47 CFR 20.3, as in effect on June 1, 1999, or any charge for, or associated with, a service provided as an adjunct to a commercial mobile radio service that is billed to the customer by or for the customer’s home service provider regardless of whether individual transmissions originate or terminate within the licensed service area of the home service provider.*

(b) *The term does not include one-way radio communications as included in 47 CFR 20.3, as in effect on June 1, 1999.*

~~(4)~~(3) (a) *“Customer” or “purchaser” means, except as provided in subsection (3)(b), a person who acquires for consideration retail telecommunications services for use or consumption and not for resale.*

(b) *For purposes of mobile telecommunications services, the term means:*

(i) *the person or entity that contracts with the home service provider for mobile telecommunications services; or*

(ii) *if the end user of mobile telecommunications services is not the contracting party, the end user of the mobile telecommunications services, but only for the purpose of determining the place of primary use.*

(c) *The term does not include:*

- (i) a reseller of mobile telecommunications services; or
- (ii) a serving carrier under an arrangement to serve the customer outside the home service provider's licensed service area.
- (4) "Home service provider" means the facilities-based carrier or reseller that the customer contracts with for the provision of mobile telecommunications services.
- (5) "Mobile telecommunications services" means commercial mobile radio service, as defined in 47 CFR 20.3, as in effect on June 1, 1999.
- (6) "Place of primary use" means the street address for the premises where the customer's use of telecommunications services primarily occurs, which must be the residential street address or the primary business street address of the customer. For mobile telecommunications services, the place of primary use must be within the licensed service area of the home service provider.
- (7) "Postpaid calling basis" means that telecommunications services are obtained by making a payment on a call-by-call basis, either through the use of a card or payment mechanism, such as a bank card, travel card, credit card, or debit card, or by a charge made to a telephone number that is not associated with the origination or termination of the telecommunications service.
- (8) "Private communications service" means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which the channel or channels are connected, and includes switching capacity, extension lines, stations, and other associated services that are provided in connection with the use of the channel or channels.
- (9) (a) "Reseller" means a provider who purchases mobile telecommunications services from another telecommunications services provider and then resells, uses as a component part of, or integrates the purchased services into a mobile telecommunications service.
- (b) The term does not include a serving carrier with which a home service provider arranges for the services to its customers outside the home service provider's licensed service area.
- ~~(2)~~(10) (a) "Retail telecommunications" means, except as provided in subsection (10)(b), the two-way transmission of voice, image, data, or other information over wire, cable, fiber optics, microwave, radio, satellite, or similar facilities that originates or terminates in this state and is ~~billed~~ charged to a customer with a Montana service address.
- (b) For mobile telecommunications services, the term means the two-way transmission of voice, image, data, or other information that originates or terminates in a single state that is charged to a Montana service address.
- (c) The term includes but is not limited to local exchange, long-distance, private communications, two-way paging, wireless telephony telecommunications, and related services, regardless of whether the services are paid for on a call-by-call basis or postpaid calling basis.
- ~~(3)~~(11) (a) "Sales price" means the consideration paid for the distribution, supply, furnishing, sale, transmission, or delivery of retail telecommunications services to the end-user customer.
- (b) ~~Sales price~~ The term does not include:

- (i) an amount added to the customer's bill because of a charge made pursuant to the tax imposed by this part;
- (ii) charges added to a customer's bill under 10-4-201, 53-19-311, and 69-3-844;
- (iii) federal excise taxes or other federally imposed charges or fees collected for and remitted to a federal government entity;
- (iv) a charge for a dishonored check;
- (v) a finance or credit charge, penalty or charge for delayed payment, or discount for prompt payment;
- (vi) a charge for construction or relocation of facilities;
- (vii) *charges for* the installation, repair, inspection, or servicing of equipment and wiring located on customer premises;
- (viii) bad debt;
- (ix) a charge added by a hotel, motel, or similar facility for telecommunications services used in placing calls for guests;
- (x) charges paid by inserting coins in coin-operated telecommunications devices; and
- (xi) charges for telecommunications services that have been prepaid by a prepaid calling card that enables the origination of calls by using an access number or authorization code.

~~(4)~~(12) (a) "Service address" means, *except as provided in subsection (12)(b):*

~~(a)(i) the location from where the retail telecommunications services originated or where the retail telecommunications services are received; or of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of the location to which the bill for the call is sent or the location from which the payment of the bill is received;~~

~~(b)(ii) where there is not a defined location, the location in Montana where the statement of charges for retail telecommunications services is mailed if the location in subsection (12)(a)(i) is not known, the origination point of the signal of the telecommunications service first identified by either the seller's telecommunications system or, if the system used to transport the signal is not that of the seller, in information received by the seller from its service provider; or~~

~~(iii) if the location in subsection (12)(a)(i) or (12)(a)(ii) is not known, the location of the customer's place of primary use.~~

~~(b) For mobile telecommunications services, the term means the location in Montana of the customer's place of primary use.~~

(13) "Serving carrier" means a facilities-based carrier providing mobile telecommunications services to a customer outside a home service provider's or reseller's licensed service area.

~~(5)~~(14) "Telecommunications services provider" means a person providing retail telecommunications services."

**Section 2.** Section 15-53-130, MCA, is amended to read:

**"15-53-130. Imposition of retail telecommunications excise tax — rate.** An excise tax of 3.75% is imposed on the sales price of retail telecommunications services. ~~The Subject to [sections 3 and 4], the tax is~~

imposed on the purchaser and must be collected by the telecommunications services provider.”

**Section 3. Mobile telecommunications services.** (1) Mobile telecommunications services provided in this state to a customer for which the charges are billed by or for the customer’s home service provider are considered to be provided by the customer’s home service provider.

(2) All charges for mobile telecommunications services that are considered to be provided by the customer’s home service provider may be subject to tax in this state if the customer’s place of primary use is located within this state, regardless of where the mobile telecommunications services originate, terminate, or pass through.

(3) The definitions and provisions of the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. 116 through 126, are incorporated into this section by reference.

(4) (a) If a customer believes that an amount of tax or assignment of place of primary use or taxing jurisdiction included on a bill is erroneous, the customer shall notify the home service provider in writing. The customer shall include in the written notification the street address for the customer’s place of primary use, the account name and number for which the customer seeks a correction of the tax assignment, a description of the error asserted by the customer, and any other information that the home service provider reasonably requires to process the request. Within 60 days of receiving a notice, the home service provider shall review its records and the electronic database or enhanced zip code used to determine the customer’s taxing jurisdiction. If the review shows that the amount of tax, assignment of place of primary use, or taxing jurisdiction is in error, the home service provider shall correct the error and refund or credit the amount of tax erroneously collected from the customer for a period of up to 2 years. If the review shows that the amount of tax, assignment of place of primary use, or taxing jurisdiction is correct, the home service provider shall provide a written explanation to the customer.

(b) The procedures set forth in subsection (4)(a) are the first course of remedy available to customers seeking correction of assignment of place of primary use or taxing jurisdiction or seeking a refund of or other compensation for taxes erroneously collected by the home service provider, and a cause of action based upon a dispute arising from those taxes does not accrue, to the extent otherwise permitted by law, until a customer has reasonably exercised the rights and procedures set forth in this subsection (4).

**Section 4. Telecommunications services other than mobile telecommunications services.** (1) Except as provided in subsection (2), the sale of a telecommunications service paid for on a call-by-call basis is taxable in this state if the service address is located within the state.

(2) The sale of a telecommunications service paid for on a postpaid calling basis is taxable in this state if the origination point of the telecommunications signal as first identified by either the seller’s telecommunications system or, if the system used to transport the signal is not that of the seller, the information received by the seller from its service provider is within the state.

(3) The sale of a private communications service is taxable in this state in the following manner:

(a) all charges related to a customer channel termination point located within the state are taxable within the state;

(b) all charges for service where all of the customer channel termination points are located entirely within the state are taxable within the state;

(c) charges for a segment of a channel between two taxpayer channel termination points, one located inside the state and one located outside the state, and for which the segment is separately charged are apportioned 50% to this state for taxation purposes; and

(d) charges for segments of a channel located in this state and one or more other states and for which the segments are not separately billed are apportioned to this state for taxation purposes based on the percentage determined by dividing the number of taxpayer channel termination points in this state by the total number of taxpayer channel termination points.

(4) In the case of a bundled transaction of telecommunications services, if the charges are attributable to services that are taxable and services that are nontaxable, the portion of the price attributable to the nontaxable services is subject to tax unless the provider can reasonably identify the portion of nontaxable services from its books and records kept in the regular course of business.

**Section 5. Codification instruction.** [Sections 3 and 4] are intended to be codified as an integral part of Title 15, chapter 53, part 1, and the provisions of Title 15, chapter 53, part 1, apply to [sections 3 and 4].

**Section 6. Effective date.** [This act] is effective July 1, 2003.

**Section 7. Applicability.** [This act] applies to bills issued on or after the first day of the first month after [the effective date of this act].

**Section 8. Contingent termination.** The attorney general shall certify to the code commissioner if a court of competent jurisdiction enters a final judgment on the merits that is no longer subject to appeal and that, based on federal law, substantially limits or impairs the essential elements of 4 U.S.C. 116 through 126. Upon certification, [this act] is void as of the date judgment was entered.

Approved April 25, 2003

## CHAPTER NO. 516

[SB 402]

AN ACT CREATING THE MONTANA MORTGAGE BROKER AND LOAN ORIGINATOR LICENSING ACT; PROVIDING DEFINITIONS; ESTABLISHING LICENSING REQUIREMENTS; REQUIRING RECORD RETENTION, SURETY BONDS, AND THE MAINTENANCE OF TRUST ACCOUNTS; PROHIBITING CERTAIN ACTIVITIES AND PROVIDING PENALTIES; AUTHORIZING RULEMAKING BY THE DEPARTMENT OF ADMINISTRATION; PROVIDING FOR SUSPENSION, REVOCATION, AND REINSTATEMENT OF LICENSES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Short title and purpose.** (1) [Sections 1 through 22] may be cited as the "Montana Mortgage Broker and Loan Originator Licensing Act".

(2) The legislature recognizes that buying or financing a home is one of the largest, most complicated, and vitally important decisions facing consumers in Montana. Therefore, the legislature finds it desirable to license residential mortgage brokers and loan originators to promote honesty, education, and professionalism, to ensure the availability and diversity of residential mortgage funding, and to protect Montana consumers and the stability of Montana's economy.

**Section 2. License requirement.** A person or entity may not act as a residential mortgage broker or loan originator after September 1, 2004, unless licensed under the provisions of [sections 1 through 22].

**Section 3. Definitions.** As used in [sections 1 through 22], the following definitions apply:

(1) "Bona fide third party" means a person or entity that provides services relative to residential mortgage loan transactions. The term includes but is not limited to real estate appraisers and credit reporting agencies.

(2) "Borrower" means an individual who is solicited to purchase or who purchases the services of a mortgage broker for other than commercial mortgage lending.

(3) "Department" means the department of administration provided for in 2-15-1001, acting through its division of banking and financial institutions.

(4) "Designated manager" means a person employed by a mortgage broker entity, other than a sole proprietorship, as the person responsible for operating the business at the location where the person is employed. A designated manager must be licensed as a mortgage broker.

(5) "Entity" means a business organization, other than a sole proprietorship or an individual person, that provides mortgage broker services.

(6) "Lender" means an entity that funds or services a residential mortgage loan.

(7) "Loan originator" means a licensed individual employed by a mortgage broker to assist borrowers by originating a residential loan.

(8) "Mortgage" means a consensual interest in real property located in Montana, including improvements, securing a debt evidenced by a mortgage, trust indenture, deed of trust, or other lien on real property.

(9) "Mortgage banker" means a person or entity that makes, services, or buys and sells mortgage loans and that may be required to submit audited financial statements to the United States department of housing and urban development, the United States department of veterans affairs, the federal national mortgage association, the federal home loan mortgage corporation, or the government national mortgage association.

(10) "Mortgage broker" means a person or entity that provides services for a fee as an intermediary between a borrower and a lender in obtaining financing for the borrower that is to be secured by a residential dwelling for between one and four families located on real property purchased by the borrower with the loan provided by the lender.

(11) "Originate" means:

(a) to negotiate or arrange or to offer to negotiate or arrange a mortgage loan between a borrower and a person or entity that makes or funds mortgage loans;

(b) to issue a commitment for a mortgage loan to a borrower; or

(c) to place, assist in placing, or find a mortgage loan for a borrower.

(12) "Trust account" means a depository account with a financial institution that provides deposit insurance that is separate and distinct from any personal, business, or other account of the mortgage broker and that is maintained solely for the holding and payment of bona fide third-party fees.

**Section 4. Exemptions.** The provisions of [sections 1 through 22] do not apply to:

(1) a person or entity that makes or collects loans, to the extent that those activities are subject to licensure or registration by this state under other provisions of Montana law unless the person or entity is also acting as a mortgage broker or loan originator;

(2) a bank or trust company chartered under Title 32, chapter 1, a bank or trust company chartered under the National Bank Acts in Title 12 of the United States Code, a building and loan association chartered under Title 32, chapter 2, a savings and loan association chartered under the Home Owners' Loan Act in Title 12 of the United States Code, a credit union chartered under Title 32, chapter 3, or a credit union chartered under the Federal Credit Union Act in Title 12 of the United States Code;

(3) a person or entity engaged solely in commercial mortgage lending;

(4) a political subdivision or governmental entity of the United States or any state of the United States; or

(5) a mortgage banker, except that a mortgage banker that also provides services as a mortgage broker for more than four mortgage loans in a calendar year must be licensed as a mortgage broker with respect to those mortgage broker services.

**Section 5. Overall licensing requirements.** All persons and entities desiring to conduct business as a mortgage broker or to work as a loan originator shall apply to the department for a license and pay a license fee under the provisions of [sections 1 through 22] on or after July 1, 2004. Except as provided in [section 8], applicants shall comply with all requirements of [sections 1 through 22], including but not limited to requisite work experience, successful completion of an examination, and completion of an application approved by the department. All licenses issued under this section are nontransferable and nonassignable.

**Section 6. Experience requirements.** (1) Except as provided in [section 8]:

(a) an individual applying for a license as a mortgage broker must have a minimum of 3 years of experience working as a loan originator or in a related field; and

(b) an individual applying for a license as a loan originator must have a minimum of 6 months of experience working in a related field.

(2) The department shall by rule establish what constitutes work in a related field.

**Section 7. Examination requirements.** (1) Except as provided in [section 8], all individuals seeking a mortgage broker's license and individuals seeking a loan originator's license shall submit to an examination provided for by the department. The department may use a third party to perform examination and grading services.



(2) The examination must be designed to demonstrate that the applicant possesses competency to originate loans. The test may cover subject matter areas including but not limited to:

- (a) knowledge of [sections 1 through 22];
- (b) knowledge of disclosures and protections that borrowers are entitled to by state and federal law;
- (c) the ability to read, understand, and explain appraisal basics, credit reports, and title commitments; and
- (d) the ability to evaluate credit, calculate a basic debt-to-income ratio, calculate loan-to-value ratios, and complete a basic loan application.

**Section 8. Exception to experience and examination requirements.**

A person providing services as a mortgage broker or an individual acting as a loan originator on or before December 31, 2002, must be licensed by the department in the same capacity as that person was operating on or before December 31, 2002. On or after July 1, 2004, the person or individual shall apply to the department for the appropriate license, pay the required fees, and have the application approved by the department. A person or individual entitled to licensure under this section is not subject to the experience requirements of [section 6] or the examination requirements of [section 7].

**Section 9. Application for mortgage broker license.** (1) An application for a mortgage broker license must include:

- (a) the proposed location of the business, with a photograph of each location at which business will be transacted. If the business is to be conducted out of a residence, verification must be supplied concerning compliance with all zoning laws and regulations.
- (b) (i) the name and address of the sole proprietor;
- (ii) the name and address of each partner; or
- (iii) the name and address of any person that owns 5% or more of a mortgage broker entity that is other than a sole proprietorship or partnership;
- (c) evidence of an irrevocable letter of credit or surety bond required by [section 15];
- (d) a statement as to whether the applicant or, to the best of the applicant's knowledge, any shareholder, member, partner, designated manager, or employee of the applicant is currently under investigation, has been convicted of or has pleaded guilty to any felony or criminal offense involving fraud or dishonesty, or has been subject to any adverse civil judgment for any conduct involving fraudulent or dishonest dealing; and
- (e) evidence that the designated manager meets the requirements for licensure as a mortgage broker.

(2) The department shall investigate each individual applicant. The investigation shall include a criminal records check based on the fingerprints of each individual applicant and a civil records check. The department shall require each individual applicant to file a set of the applicant's fingerprints, taken by a law enforcement agency, and any other information necessary to complete a statewide and nationwide criminal check with the criminal investigation bureau of the department of justice for state processing and with the federal bureau of investigation for federal processing. All costs associated with the criminal history check are the responsibility of the applicant. Criminal

history records provided to the department under this section are confidential, and the department may use the records only to determine if the applicant is eligible for licensure. If an investigation outside this state is necessary, the department may require the applicant to advance sufficient funds to pay the actual expenses of the investigation. The department may deny the application if the applicant's criminal history demonstrates any felony criminal convictions or other convictions involving fraud or dishonesty or if the applicant has had any adverse civil judgments involving fraudulent or dishonest dealings.

**Section 10. Application for loan originator license — employment of loan originator.** (1) An application for a loan originator license must include:

- (a) the name and address of the applicant;
- (b) evidence of the applicant's experience and knowledge of the mortgage industry; and
- (c) a statement as to whether the applicant is under investigation, has been convicted of or pleaded guilty to any felony or criminal offense involving fraud or dishonesty, or has been subject to any adverse civil judgment for any conduct involving fraudulent or dishonest dealing.

(2) The department shall investigate each applicant. The investigation shall include a criminal records check based on the fingerprints of the applicant and a civil records check. The department shall require each applicant to file a set of the applicant's fingerprints, taken by a law enforcement agency, and any other information necessary to complete a statewide and nationwide criminal check with the criminal investigation bureau of the department of justice for state processing and with the federal bureau of investigation for federal processing. All costs associated with the criminal history check are the responsibility of the applicant. Criminal history records provided to the department under this section are confidential and the department may use the records only to determine if the applicant is eligible for licensure. If an investigation outside this state is necessary, the department may require the applicant to advance sufficient funds to pay the actual expenses of the investigation. The department may deny the application if the applicant's criminal history demonstrates any felony criminal convictions or other convictions involving fraud or dishonesty or if the applicant has had any adverse civil judgments involving fraudulent or dishonest dealings.

(3) A loan originator may transact business only for an employing mortgage broker licensed in accordance with the provisions of [sections 1 through 22]. Each original license issued to a loan originator must be provided to and maintained by the employing mortgage broker at the mortgage broker's main office. A copy of the loan originator's license must be displayed at the office where that loan originator principally transacts business.

(4) If the employment of a loan originator is terminated, the mortgage broker shall return the loan originator's license to the department within 5 business days after the termination. For a period of 6 months after the termination of employment, the loan originator may request the transfer of the license to another mortgage broker by submitting a relocation application to the department, along with a fee established by the department by rule. The return of the license of any loan originator to the department that is not transferred to another mortgage broker terminates the right of the loan originator to engage in any residential mortgage loan origination activity until department procedures have been followed to reinstate the license. The license of any loan originator

that has been returned to the department and not transferred within 6 months of termination of employment must be canceled.

**Section 11. Fees — license renewal — disposition of fees.** (1) An individual mortgage broker or an entity seeking licensure as a mortgage broker shall pay an initial nonrefundable license application fee of \$500. A loan originator shall pay an initial nonrefundable license application fee of \$400. An applicant shall pay one-half of these initial nonrefundable license application fees for any license period of less than 6 months.

(2) The license of a mortgage broker or loan originator is valid for a 1-year period and expires on June 30. Every licensee shall, on or before May 31 of the year, pay to the department a renewal fee in an amount set by the department by rule. The fees set by the department must be commensurate with the costs of the program. Failure to submit required information or fees within the time prescribed automatically revokes the license.

(3) An application for renewal must be accompanied by evidence that the continuing education requirements provided for in [section 12] have been met and that there has not been a material change in the status of the licensee in the preceding 12 months.

(4) All fees collected under this section must be deposited in the department's state special revenue fund to be used by the department in administering the provisions of [sections 1 through 22].

**Section 12. Continuing education requirements.** All loan originators and all individual mortgage brokers shall complete and submit to the department evidence of at least 12 hours of continuing education every year at the time they submit their license renewal applications. The 12 hours of continuing education must be in courses or programs of study approved by the department and in areas established by the department by rule.

**Section 13. In-state office requirement — records maintenance — advertising requirement.** (1) A person or entity licensed as a mortgage broker shall maintain at least one physical office located in this state either on its own accord or in conjunction with another licensed mortgage broker or regulated lender located in this state. Licensees shall maintain copies of residential mortgage loan files and trust account records at the Montana office location where services are provided. Each office location must have at least one phone line. Licensees shall pay state income tax on all income earned in Montana.

(2) A mortgage broker shall maintain a residential mortgage file for a minimum of 5 years from the date of the last activity pertaining to the file. A mortgage broker shall maintain trust account records for a minimum of 5 years.

(3) A licensee or licensed entity shall disclose in any printed, published, televised, e-mail, or internet advertisement for the provision of services the name and address of the licensee and the number designated on the license issued to the licensee or licensed entity by the department.

**Section 14. Requirement for designated manager.** (1) A mortgage broker that is not a sole proprietorship shall designate to the department a licensed mortgage broker within its organization as the designated manager of the organization.

(2) If the designated manager ceases to act in that capacity, within 15 days the mortgage broker shall designate another licensed mortgage broker as designated manager and shall submit information in writing to the department

establishing that the subsequent designated manager is in compliance with the provisions of [sections 1 through 22].

**Section 15. Irrevocable letter of credit or surety bond — notice of legal action.** (1) Each licensee other than a loan originator shall maintain at all times an irrevocable letter of credit or surety bond, naming the department as a beneficiary, in the amount of \$25,000 for each location identified in the application for licensure. The department shall use the proceeds of the letters of credit or surety bonds to reimburse borrowers or bona fide third parties who successfully demonstrate a financial loss because of an act of a licensee that violates the provisions of [sections 1 through 22].

(2) A mortgage broker or loan originator shall give notice to the department by certified mail within 15 days of the mortgage broker's or loan originator's knowledge of the initiation of an investigation or the entry of a judgment in a criminal or civil action. The notice must be given if the investigation or the legal action is in any state and involves a mortgage broker, anyone having an ownership interest in a mortgage broker entity, or a loan originator. In the case of a legal action, the notice must include a copy of the criminal or civil judgment.

**Section 16. Prohibitions — required disclosure.** (1) A mortgage broker or loan originator may not do any of the following:

- (a) retain original documents owned by the borrower and submitted in connection with the loan application;
- (b) directly or indirectly employ any scheme to defraud or mislead a borrower, a lender, or any other person;
- (c) make any misrepresentation or deceptive statement in connection with a residential mortgage loan, including but not limited to interest rates, points, costs at closing, or other financing terms or conditions; or
- (d) fail to pay a bona fide third party later than 30 days after recording of the loan closing documents or 90 days after completion of the bona fide third-party service, whichever is earlier, unless otherwise agreed by the parties.

(2) Prior to providing mortgage broker services to a borrower, the licensee, in addition to other disclosures required by [sections 1 through 22] and other state and federal laws, shall provide to the borrower at the time of application a written disclosure containing substantially the following language, which must be signed by the borrower:

**“MORTGAGE LOAN ORIGINATION DISCLOSURE**

(Name of licensee) is a licensed mortgage broker in Montana authorized to provide mortgage brokerage services to you in connection with your real estate loan. Lenders whose loan products we distribute generally provide their loan products to us at a wholesale rate. The rate you pay may be higher.

**SECTION 1. NATURE OF RELATIONSHIP.** In connection with this mortgage loan:

- (1) (name of licensee) is acting as an independent contractor and not as your agent;
- (2) (name of licensee) enters into separate independent contractor agreements with various lenders; and
- (3) while (name of licensee) seeks to assist you in meeting your financial needs, (name of licensee) does not distribute products of all lenders or investors in the market and cannot guarantee the lowest price or best terms available.

## SECTION 2. OUR COMPENSATION.

(1) The retail price (name of licensee) offers you, including the interest rate, total points, and fees, will include (name of licensee's) compensation.

(2) In some cases, (name of licensee) may be paid all of (name of licensee's) compensation by either you or the lender.

(3) Alternatively, (name of licensee) may be paid a portion of (name of licensee's) compensation by both you and the lender. For example, in some cases, if you would rather pay a lower interest rate, you may pay more money in upfront points and fees. Also, in some cases, if you would rather pay less money up front, you may be able to pay some or all of our compensation indirectly through a higher interest rate, in which case (name of licensee) will be paid directly by the lender.

(4) (Name of licensee) may also be paid by the lender based on the value of the mortgage loan or related servicing rights in the market place or based on other services, goods, or facilities performed or provided by (name of licensee) to the lender.

By signing below, you acknowledge that you have received a copy of this disclosure."

**Section 17. Trust accounts — fees other than bona fide third-party fees.** (1) Every mortgage broker doing business in this state shall:

(a) maintain a trust account at a financial institution located in this state whose deposits or shares are insured, and the trust account funds may not be commingled with any other funds of the mortgage broker;

(b) deposit into the trust account any bona fide third-party fee that the mortgage broker receives unless the borrower pays the bona fide third party directly; and

(c) pay third-party fees to a bona fide third party from the mortgage broker's trust account unless the borrower pays the bona fide third party directly.

(2) A mortgage broker may not charge or receive, directly or indirectly, fees for assisting a borrower in obtaining a mortgage until all of the services that the mortgage broker has agreed to perform for the borrower are completed. A mortgage broker may not charge a residential loan application fee in excess of the amount allowed by federal law. Prior to completion of services, the fees provided for in subsection (3) incurred by a bona fide third party in assisting the borrower to obtain a mortgage must be paid.

(3) The following fees must be paid directly by the borrower to the bona fide third party providing the services or must be deposited by the borrower, if applicable, into the mortgage broker's trust account for payment of services performed by the bona fide third party:

(a) credit report fees;

(b) notary fees;

(c) title search, appraisal, or survey fees;

(d) rate-lock fees not exceeding 3% of the mortgage loan amount; and

(e) fees paid directly by the borrower to a state or federal government agency or instrumentality for purposes of processing a mortgage application relating to a government-sponsored or guaranteed mortgage program.

**Section 18. Revocation, suspension, and reinstatement of licenses.**

(1) The department, upon giving the licensee 10 days' written notice, which includes a statement of the grounds for the proposed suspension or revocation, and informing the licensee that the licensee has the right to be heard at an administrative hearing if requested by the licensee, may suspend or revoke a license if it finds that the licensee has violated any provision of [sections 1 through 22].

(2) The department may reinstate any suspended or revoked license upon a showing that the licensee has corrected all deficiencies.

**Section 19. Department authority — rulemaking.** (1) The department shall adopt rules necessary to carry out the intent and purposes of [sections 1 through 22]. The rules adopted are binding on all licensees and enforceable through the power of suspension or revocation of licenses.

(2) The rules must address:

- (a) revocation or suspension of licenses for cause;
- (b) investigation of applicants and licensees and handling of complaints made by any person in connection with any business transacted by a licensee;
- (c) prescribing forms for applications;
- (d) developing or approving tests to be given as a prerequisite for licensure;
- (e) approval of programs for continuing education; and
- (f) establishing fees for testing, continuing education programs, and license renewals.

(3) The department may seek a writ or order restraining or enjoining, temporarily or permanently, any act or practice violating any provision of [sections 1 through 22].

(4) (a) The department may at any time examine any mortgage broker transaction and may examine the residential mortgage loan files, trust account records, and other information related to mortgage loan transactions of a licensee.

(b) When conducting a financial examination or an audit of a licensee, the department may require the licensee to pay a fee of \$300 per day for each examiner performing the financial examination or audit.

(c) If any examination fees are not paid within 30 days of the department's mailing of an invoice, the license of the mortgage broker or designated manager for the mortgage broker entity may be suspended or revoked.

(5) (a) The department may exchange information with federal regulatory agencies, the attorney general, the consumer protection office of the department, and the legislative auditor.

(b) Except as provided in subsection (5)(a), the department shall treat all confidential criminal justice information as confidential unless otherwise required by law.

(6) The department shall prepare, at least once each calendar year, a roster listing the name and locations for each mortgage broker and a roster of all loan originators and designated managers and the name of their employing brokers.

**Section 20. Access to records — witnesses.** For the purpose of [sections 1 through 22], the department or the department's authorized representatives must be given free access to the offices and places of business and files of all

licensees. The department or the department's authorized representative may require the attendance of any person and examine that person under oath relative to mortgage loans or related business or relative to the subject matter of any examination, investigation, or hearing and may require the production of books, accounts, papers, or records. In the event of disobedience to any subpoena or other process issued by the department or failure to produce any books, accounts, papers, or records, the department shall apply to the first judicial district court of Lewis and Clark County for an order requiring the evidence and testimony of witnesses and the production of books, accounts, papers, or records.

**Section 21. Injunctions — receivers.** (1) Whenever the department has reasonable cause to believe that any person is violating or is threatening to violate [sections 1 through 22] or a rule adopted under [sections 1 through 22], the department may, in addition to all actions provided for in [sections 1 through 22] and without prejudice to those actions, seek an order requiring the person to desist or to refrain from the violation.

(2) An action may be brought by the department in the district court of the first judicial district, Lewis and Clark County, to enjoin the person from engaging in or continuing the violation or from doing any act or acts in furtherance of the violation. In any action, a preliminary or final injunction may be ordered as considered proper.

(3) In addition to all other means provided by law for the enforcement of a restraining order or injunction, the court in which the action is brought may impound and appoint a receiver for the property and business of the defendant, including books, papers, documents, or records pertaining to the property or business, or as much of the property or business as the court considers reasonably necessary to prevent violations of [sections 1 through 22]. The receiver, when appointed and qualified, has the powers and duties as to custody, collection, administration, winding up, and liquidation of the property and business that are conferred upon the receiver by the court.

**Section 22. Penalties.** (1) A person who acts or offers to act in any capacity as a mortgage broker or loan originator without a license in this state or while a license is suspended or revoked is subject to the penalty provisions of subsections (3) and (5).

(2) Any person who violates a provision of [sections 1 through 22] or a rule adopted under [sections 1 through 22] is subject to the penalty provisions of subsection (3).

(3) For a first violation of subsection (1) or (2), the department may impose a fine of not less than \$5,000 or more than \$10,000. For a second or subsequent violation, the department may impose a fine of not less than \$10,000 or more than \$20,000. Each violation of the provisions of subsection (1) or (2) constitutes a separate offense.

(4) The fines must be deposited in the state general fund.

(5) A person practicing as a mortgage broker or loan originator without being licensed as required under subsection (1) is guilty of a misdemeanor and may be punished by a fine of not less than \$250 or more than \$1,000, by imprisonment in the county jail for not less than 90 days or more than 1 year, or both. Each violation of the provisions of subsection (1) constitutes a separate offense.

**Section 23. Codification instruction.** [Sections 1 through 22] are intended to be codified as an integral part of Title 32, and the provisions of Title 32 apply to [sections 1 through 22].

**Section 24. Effective date.** [This act] is effective on passage and approval.

Approved April 25, 2003

## CHAPTER NO. 517

[SB 434]

AN ACT EXTENDING IMMUNITY TO PRIVATE RESPONSE TEAMS CONTRACTED BY THE STATE, A POLITICAL SUBDIVISION OF THE STATE, OR A LOCAL OR TRIBAL EMERGENCY RESPONSE AUTHORITY RESPONDING TO A HAZARDOUS MATERIAL INCIDENT; REMOVING GOVERNMENTAL IMMUNITY FOR BAD FAITH; AMENDING SECTION 10-3-1217, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 10-3-1217, MCA, is amended to read:

**“10-3-1217. Liability of persons and response team members rendering assistance.** (1) ~~The state or a political subdivision of the state, the commission, the local emergency response authority, and the state hazardous material incident response team or, except for willful misconduct, gross negligence, or bad faith, an employee, representative, or agent of the state or a political subdivision of the state, the commission, the local emergency response authority, and the state hazardous material incident response team is~~ *The following are not liable under this part for injuries, costs, damages, expenses, or other liabilities resulting from the release or threatened release or remedial action resulting from the release or threatened release of a hazardous material:*

(a) *the state or a political subdivision of the state;*

(b) *the commission;*

(c) *the local emergency response authority;*

(d) *the state hazardous material incident response team;*

(e) *a private emergency response team dispatched by the state, a political subdivision of the state, or a local or tribal emergency response authority for emergency response activities; and*

(f) *an employee, representative, or agent of any of the entities listed in subsections (1)(a) through (1)(e), except for willful misconduct or gross negligence.*

(2) The immunity includes but is not limited to indemnification, contribution, or third-party claims for wrongful death, personal injury, illness, loss or damages to property, or economic loss.

(3) A person becomes a member of the state hazardous material incident response team when the person is contacted, dispatched, or requested for response regardless of the person's location.”

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

Approved April 25, 2003



**CHAPTER NO. 518**

[SB 454]

AN ACT REVISING THE SCHEDULE OF BLOCK GRANTS FOR COUNTYWIDE SCHOOL RETIREMENT AND COUNTYWIDE SCHOOL TRANSPORTATION AS ESTABLISHED BY CHAPTER 574, LAWS OF 2001, AND MODIFIED BY CHAPTER 13, SPECIAL LAWS OF AUGUST 2002; AMENDING SECTIONS 26 AND 27, CHAPTER 13, SPECIAL LAWS OF AUGUST 2002; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 26, Chapter 13, Special Laws of August 2002, is amended to read:

**Section 26.** Section 245, Chapter 574, Laws of 2001, is amended to read:

**Section 245. Countywide school retirement block grants.** (1) The office of public instruction shall distribute one-half of the amount appropriated for countywide school retirement in November and the remainder in May. The total amount for each county is as follows:

	FY 2002 Elementary Payment	FY 2002 High School Payment	FY 2003 Elementary Payment	FY 2003 High School Payment
Beaverhead	\$86,692	\$50,789	<del>\$87,351</del> \$55,503	<del>\$51,175</del> \$41,981
Big Horn	62,668	36,963	<del>63,144</del> 95,018	<del>37,244</del> 33,837
Blaine	61,160	10,193	<del>61,624 46,318</del> 46,437	<del>10,271 81,109</del> 81,145
Broadwater	0	92,686	0	<del>93,390</del> 34,949
Carbon	43,451	82,110	<del>43,782 72,602</del> 72,592	<del>82,734 58,957</del> 69,522
Cartier	9,751	5,453	<del>9,825 8,478</del> 8,638	<del>5,495 6,155</del> 6,244
Cascade	349,056	192,848	<del>351,709 282,266</del> 280,363	<del>194,314 142,282</del> 141,301
Chouteau	75,384	41,034	<del>75,957 58,455</del> 60,978	<del>41,346 29,474</del> 30,825
Custer	78,925	36,930	<del>79,525</del> 57,608	<del>37,211</del> 32,128
Daniels	0	37,994	0	<del>38,283</del> 36,083
Dawson	85,568	38,722	<del>86,219</del> 64,693	<del>39,016</del> 24,827
Deer Lodge	39,980	17,059	<del>40,284 34,455</del> 35,062	<del>17,189 16,807</del> 14,748
Fallon	0	0	0	<del>0 30,444</del> 30,930
Fergus	119,028	78,809	<del>119,932 90,464</del> 86,528	<del>79,408 55,527</del> 52,925
Flathead	558,861	296,410	<del>563,108</del> 530,274	<del>298,662</del> 268,731
Gallatin	383,035	181,743	<del>385,946</del> 537,244	<del>183,125</del> 107,717
Garfield	12,337	10,170	<del>12,431</del> 12,100	<del>10,247</del> 4,620
Glacier	79,924	34,016	<del>80,532</del> 106,815	<del>34,275</del> 10,494
Golden Valley	0	16,716	0	<del>16,843 14,492</del> 14,952
Granite	14,074	48,026	<del>14,180 12,523</del> 12,758	<del>48,391 30,727</del> 31,458
Hill	142,867	82,538	<del>143,953 59,593</del> 130,460	<del>83,165 35,211</del> 77,730
Jefferson	116,679	59,523	<del>117,565 143,901</del> 143,931	<del>59,976 59,699</del> 59,751
Judith Basin	6,149	21,359	<del>6,196</del> 4,744	<del>21,521</del> 30,198
Lake	173,584	139,990	<del>174,903</del> 156,485	<del>141,054</del> 103,365
Lewis & Clark	344,112	211,726	<del>346,728 370,959</del> 370,732	<del>213,335 173,947</del> 173,725
Liberty	20,144	16,786	<del>20,297 3,067</del> 24,426	<del>16,914 31,953</del> 20,813
Lincoln	73,001	98,835	<del>73,556</del> 61,499	<del>99,586</del> 87,710
Madison	0	103,163	<del>0 4,891</del>	<del>103,947 19,788</del> 20,480
McCone	23,214	15,824	<del>23,399 21,778</del> 21,637	<del>15,945 14,004</del> 13,906
Meagher	13,654	10,678	<del>13,758 9,250</del> 10,682	<del>10,759 9,492</del> 10,715

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Mineral	0	32,206	0	<del>32,451</del> <del>33,292</del> 33,306
Missoula	487,129	362,756	<del>490,832</del> 587,637	<del>365,513</del> 357,669
Musselshell	30,675	21,577	<del>30,908</del> 48,959	<del>21,741</del> 41,250
Park	154,192	81,696	<del>155,364</del> 135,256	<del>82,317</del> 78,135
Petroleum	0	16,897	0	<del>17,026</del> <del>0,510</del> 12,393
Phillips	10,502	95,084	<del>10,582</del> <del>103,747</del> 103,759	<del>05,806</del> <del>54,728</del> 54,793
Pondera	79,805	60,307	<del>80,411</del> <del>18,821</del> 65,353	<del>60,765</del> 47,629
Powder River	18,815	15,011	<del>18,958</del> 0 19,026	<del>15,125</del> 0 8,573
Powell	69,695	22,666	<del>70,225</del> <del>71,420</del> 71,009	<del>22,838</del> <del>30,458</del> 30,326
Prairie	0	26,791	0	<del>26,995</del> 21,945
Ravalli	85,333	169,769	<del>85,981</del> <del>2,062</del> 20,867	<del>171,059</del> <del>40,316</del> 73,912
Richland	83,671	30,302	<del>84,307</del> <del>15,500</del> 12,477	<del>30,533</del> <del>26,659</del> 24,039
Roosevelt	71,090	60,329	<del>71,630</del> 96,278	<del>60,787</del> 61,038
Rosebud	359,662	286,411	<del>362,395</del> <del>475,055</del> 478,891	<del>288,588</del> <del>126,246</del> 129,268
Sanders	203,863	127,694	<del>205,413</del> 197,286	<del>128,665</del> <del>14,442</del> 117,375
Sheridan	0	46,231	0	<del>46,583</del> <del>47,628</del> 58,463
Silver Bow	249,821	141,541	<del>251,719</del> 193,304	<del>142,617</del> 119,358
Stillwater	91,487	75,926	<del>92,182</del> <del>91,185</del> 99,893	<del>76,593</del> <del>51,769</del> 58,767
Sweet Grass	36,996	36,327	<del>37,277</del> 24,214	<del>36,603</del> 12,316
Teton	57,760	41,547	<del>58,199</del> 45,217	<del>41,863</del> 40,769
Toole	43,323	51,399	<del>43,652</del> 36,109	<del>51,790</del> 73,362
Treasure	0	18,947	0	<del>19,091</del> 16,243
Valley	15,824	90,532	<del>15,944</del> <del>10,558</del> 6,751	<del>91,220</del> <del>143,204</del> 109,094
Wheatland	20,946	12,103	<del>21,105</del> 15,031	<del>12,195</del> 12,109
Wibaux	0	14,585	0	<del>14,696</del> 25,103
Yellowstone	1,125,488	643,136	<del>1,134,042</del> <del>1,070,887</del> 1,077,273	<del>648,024</del> <del>612,203</del> 615,945
Total	6,269,374	4,650,865	<del>6,317,022</del> <del>6,139,506</del> 6,326,685	<del>4,686,212</del> <del>3,723,973</del> 3,900,990

(2) The average amount of the block grants in fiscal years 2002 and 2003 must be increased by 0.76% in fiscal year 2004 and in each succeeding fiscal year.”

**Section 2.** Section 27, Chapter 13, Special Laws of August 2002, is amended to read:

“**Section 27.** Section 246, Chapter 574, Laws of 2001, is amended to read:

“**Section 246. Countywide school transportation block grants.** (1) The office of public instruction shall distribute one-half of the amount appropriated for countywide school transportation in November and the remainder in May. The total amount for each county is as follows:

	FY 2002 Payment	FY 2003 Payment
Beaverhead	\$29,924	<del>\$30,151</del> \$26,197
Big Horn	43,635	<del>43,966</del> 52,920
Blaine	3,727	<del>3,756</del> <del>13,384</del> 13,433
Broadwater	14,935	<del>15,048</del> 21,769
Carbon	23,493	<del>23,671</del> 23,040
Carter	8,675	<del>8,741</del> <del>6,457</del> 6,592
Cascade	84,382	<del>85,024</del> <del>5,760</del> 43,722

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Chouteau	33,063	<del>33,314</del> <del>26,028</del> 27,043
Custer	7,069	<del>7,123</del> 6,272
Daniels	16,771	<del>16,899</del> 12,993
Dawson	21,356	<del>21,518</del> 14,001
Deer Lodge	14,392	<del>14,502</del> <del>14,482</del> 12,532
Fallon	20,447	<del>20,603</del> <del>25,422</del> 25,428
Fergus	58,765	<del>59,211</del> <del>30,799</del> 29,415
Flathead	89,846	<del>90,529</del> 77,223
Gallatin	81,262	<del>81,879</del> 90,930
Garfield	17,284	<del>17,415</del> 7,135
Glacier	37,740	<del>38,027</del> 34,300
Golden Valley	3,547	<del>3,574</del> <del>3,591</del> 3,664
Granite	8,153	<del>8,215</del> <del>6,726</del> 6,858
Hill	46,409	<del>46,762</del> <del>17,070</del> 40,781
Jefferson	36,329	<del>36,605</del> <del>34,792</del> 34,817
Judith Basin	16,878	<del>17,007</del> 20,322
Lake	69,756	<del>70,286</del> 52,163
Lewis & Clark	58,287	<del>58,730</del> <del>69,557</del> 69,535
Liberty	15,874	<del>15,995</del> <del>12,731</del> 9,584
Lincoln	50,388	<del>50,771</del> 0 22,795
Madison	21,263	<del>21,424</del> <del>14,174</del> 12,828
McCone	12,498	<del>12,593</del> <del>11,856</del> 11,788
Meagher	4,237	<del>4,269</del> <del>6,366</del> 6,976
Mineral	7,478	<del>7,534</del> 9,038
Missoula	93,969	<del>94,683</del> 94,480
Musselshell	12,945	<del>13,043</del> 20,627
Park	31,904	<del>32,147</del> 32,394
Petroleum	9,854	<del>9,929</del> <del>6,086</del> 7,300
Phillips	31,080	<del>31,316</del> <del>43,852</del> 43,872
Pondera	22,599	<del>22,771</del> 18,308
Powder River	21,304	<del>21,465</del> 0 21,795
Powell	16,622	<del>16,748</del> <del>14,581</del> 14,507
Prairie	8,544	<del>8,609</del> 4,809
Ravalli	60,579	<del>61,040</del> <del>24,889</del> 38,440
Richland	32,995	<del>33,246</del> <del>30,868</del> 29,315
Roosevelt	25,740	<del>25,935</del> 40,216
Rosebud	97,820	<del>98,564</del> <del>89,433</del> 90,850
Sanders	71,581	<del>72,125</del> <del>173,489</del> 69,930
Sheridan	12,946	<del>13,045</del> <del>17,460</del> 24,274

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Silver Bow	21,872	<del>22,038</del> 18,381
Stillwater	27,358	<del>27,566</del> <del>15,344</del> 17,543
Sweet Grass	14,996	<del>15,110</del> 6,340
Teton	28,202	<del>28,416</del> 20,759
Toole	17,208	<del>17,330</del> 15,592
Treasure	5,446	<del>5,487</del> 5,073
Valley	26,677	<del>26,880</del> <del>36,436</del> 27,775
Wheatland	9,142	<del>9,212</del> 6,386
Wibaux	6,198	<del>6,246</del> 8,816
Yellowstone	149,314	<del>150,448</del> <del>145,322</del> 146,210
Total	1,814,759	<del>1,828,551</del> <del>1,637,437</del> 1,650,088

(2) The average amount of the block grants in fiscal years 2002 and 2003 must be increased by 0.76% in fiscal year ~~2004~~ 2004 and in each succeeding fiscal year.”

**Section 3. Codification instruction — direction to code commissioner.** (1) [Sections 1 and 2] are intended to be codified as an integral part of Title 20, chapter 9, and the provisions of Title 20, chapter 9, apply to [sections 1 and 2].

(2) The code commissioner is directed to codify section 25, Chapter 13, Special Laws of August 2002, as an integral part of Title 20, chapter 9, and the provisions of Title 20, chapter 9, apply to that section.

**Section 4. Effective date.** [This act] is effective July 1, 2003.

Approved April 25, 2003

## CHAPTER NO. 519

[SB 480]

AN ACT CLARIFYING THAT DIVIDEND INCOME IS INCLUDED IN MONTANA ADJUSTED GROSS INCOME REGARDLESS OF WHETHER DIVIDEND INCOME IS INCLUDED IN FEDERAL ADJUSTED GROSS INCOME; AMENDING SECTION 15-30-111, 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 15-30-111, MCA, is amended to read:

**“15-30-111. (Temporary) Adjusted gross income.** (1) Adjusted gross income is the taxpayer’s federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954, 26 U.S.C. 62, as that section may be labeled or amended, 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 of 1986, 26 U.S.C. 852(b)(5), as that section may be amended or renumbered, 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;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code of 1954 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(15);

(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; ~~and~~

(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), for tax years commencing after December 31, 2002, 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 federal Internal Revenue Code of 1954, as labeled or amended, 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, a county, municipality, or 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 of 1986, 26 U.S.C. 852(b)(5), as that section may be amended or renumbered, 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), the first \$3,600 of all pension and annuity income received as defined in 15-30-101;

(ii) 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 \$30,000 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 \$30,000 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 persons for services rendered by them 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 withdrawn from a family education savings account or earnings withdrawn from a family education savings account 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 15-30-603, deposited in a Montana farm and ranch risk management account, as provided in 15-30-601 through 15-30-605, in any tax year for which a deduction is not provided for federal income tax purposes; and
  - (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 15-30-142.
- (3) A shareholder of a DISC that is exempt from the corporation license 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 of 1954, as those sections may be labeled or amended, 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) 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 and before application of the two-earner married couple deduction 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.

(7) Married taxpayers who file a joint federal return and who make an election on the federal return to defer income ratably for 4 tax years because of a conversion from an IRA other than a Roth IRA to a Roth IRA, pursuant to section 408A(d)(3) of the Internal Revenue Code, 26 U.S.C. 408A(d)(3), may file separate Montana income tax returns to defer the full taxable conversion amount from Montana adjusted gross income for the same time period. The deferred amount must be attributed to the taxpayer making the conversion.

(8) An individual who contributes to one or more accounts established under the Montana family education savings program 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, as defined in 15-62-103, 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. (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.)

**15-30-111. (Effective on occurrence of contingency) Adjusted gross income.** (1) Adjusted gross income is the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954, 26

U.S.C. 62, as that section may be labeled or amended, 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 of 1986, 26 U.S.C. 852(b)(5), as that section may be amended or renumbered, 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;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code of 1954 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(15);

(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; ~~and~~

(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), for tax years commencing after December 31, 2002, 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 federal Internal Revenue Code of 1954, as labeled or amended, 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, a county, municipality, or 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 of 1986, 26 U.S.C. 852(b)(5), as that section may be amended or renumbered, 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), the first \$3,600 of all pension and annuity income received as defined in 15-30-101;

(ii) 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 \$30,000 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 \$30,000 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 persons for services rendered by them 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 withdrawn from a family education savings account or earnings withdrawn from a family education savings account 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 15-30-603, deposited in a Montana farm and ranch risk management account, as provided in 15-30-601 through 15-30-605, 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 15-30-142.

(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.

(3) A shareholder of a DISC that is exempt from the corporation license 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 of 1954, as those sections may be labeled or amended, 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) 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 and before application of the two-earner married couple deduction 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.

(7) Married taxpayers who file a joint federal return and who make an election on the federal return to defer income ratably for 4 tax years because of a conversion from an IRA other than a Roth IRA to a Roth IRA, pursuant to section 408A(d)(3) of the Internal Revenue Code, 26 U.S.C. 408A(d)(3), may file separate Montana income tax returns to defer the full taxable conversion amount from Montana adjusted gross income for the same time period. The deferred amount must be attributed to the taxpayer making the conversion.

(8) An individual who contributes to one or more accounts established under the Montana family education savings program 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, as defined in 15-62-103, 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. (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.)”

**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 commencing after December 31, 2002.

Approved April 25, 2003

## CHAPTER NO. 520

[HB 277]

AN ACT SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE IV, SECTION 8, OF THE MONTANA CONSTITUTION TO EXTEND TERM LIMITS FOR LEGISLATORS FOR AN ADDITIONAL 4 YEARS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Article IV, section 8, of The Constitution of the State of Montana is amended to read:

**“Section 8. Limitation on terms of office.** (1) The secretary of state or other authorized official shall not certify a candidate's nomination or election to, or print or cause to be printed on any ballot the name of a candidate for, one of the following offices if, at the end of the current term of that office, the candidate will have served in that office or had he not resigned or been recalled would have served in that office:

(a) 8 or more years in any 16-year period as governor, lieutenant governor, secretary of state, state auditor, attorney general, or superintendent of public instruction;

(b) ~~8~~ 12 or more years in any ~~16-year~~ 24-year period as a state representative;

(c) ~~8~~ 12 or more years in any ~~16-year~~ 24-year period as a state senator;

(d) 6 or more years in any 12-year period as a member of the U.S. house of representatives; and

(e) 12 or more years in any 24-year period as a member of the U.S. senate.

(2) When computing time served for purposes of subsection (1), the provisions of subsection (1) do not apply to time served in terms that end during or prior to January 1993.

(3) Nothing contained herein shall preclude an otherwise qualified candidate from being certified as nominated or elected by virtue of write-in votes cast for said candidate.”

**Section 2. Effective date.** This amendment is effective on approval by the electorate.

**Section 3. Submission to electorate.** This amendment shall be submitted to the qualified electors of Montana at the general election to be held in November 2004 by printing on the ballot the full title of this act and the following:

- FOR extending term limits for legislators to 12 years in a 24-year period.
- AGAINST extending term limits for legislators to 12 years in a 24-year period.

## CHAPTER NO. 521

[HB 721]

AN ACT REVISING THE LAWS RELATING TO WATER'S-EDGE ELECTIONS FOR CORPORATE INCOME TAX PURPOSES; INCLUDING TAXABLE INCOME SHIFTED TO A TAX HAVEN IN THE APPORTIONMENT OF INCOME FOR THE PURPOSES OF A WATER'S-EDGE ELECTION; IDENTIFYING TAX HAVENS; PROVIDING THAT A PORTION OF THE TAX COLLECTIONS FROM WATER'S-EDGE CORPORATIONS BE ALLOCATED TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES FOR FISCAL YEAR 2005; AMENDING SECTIONS 15-1-501, 15-31-121, 15-31-322, 15-31-323, 15-31-324, AND 15-31-326, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

**Section 1.** Section 15-1-501, MCA, is amended to read:

**"15-1-501. Disposition of money from certain designated license and other taxes.** (1) The state treasurer shall deposit to the credit of the state general fund in accordance with the provisions of subsection (3) all money received from the collection of:

- (a) income taxes, interest, and penalties collected under chapter 30;
- (b) *except as provided in 15-31-121*, all taxes, interest, and penalties collected under chapter 31;
- (c) oil and natural gas production taxes distributed to the general fund under 15-36-324;
- (d) electrical energy producer's license taxes under chapter 51;
- (e) the retail telecommunications excise tax collected under Title 15, chapter 53, part 1;
- (f) liquor license taxes under Title 16;
- (g) fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses as provided in 61-5-121;
- (h) estate taxes under Title 72, chapter 16; and
- (i) fees based on the value of currency on deposit and tangible personal property held for safekeeping by a foreign capital depository as provided in 15-31-803.

(2) The department shall also deposit to the credit of the state general fund all money received from the collection of license taxes and all net revenue and receipts from all sources, other than certain fees, under the operation of the Montana Alcoholic Beverage Code.

(3) Notwithstanding any other provision of law, the distribution of tax revenue must be made according to the provisions of the law governing allocation of the tax that were in effect for the period in which the tax revenue was recorded for accounting purposes. Tax revenue must be recorded as prescribed by the department of administration, pursuant to 17-1-102(2) and (4), in accordance with generally accepted accounting principles.

(4) All refunds of taxes must be attributed to the funds in which the taxes are currently being recorded. All refunds of interest and penalties must be attributed to the funds in which the interest and penalties are currently being recorded.”

**Section 2.** Section 15-31-121, MCA, is amended to read:

**“15-31-121. Rate of tax — minimum tax — distribution of revenue.** (1) Except as provided in subsection (2), the percentage of net income to be paid under 15-31-101 is 6 3/4% of all net income for the taxable tax period.

(2) For a taxpayer making a water’s-edge election, the percentage of net income to be paid under 15-31-101 is 7% of all taxable net income for the taxable tax period.

(3) Each corporation subject to taxation under this part shall pay a minimum tax of not less than \$50.

(4) *For fiscal year 2005, the tax collected from water’s-edge corporations must be deposited as follows:*

(a) *\$375,000 in the state special revenue fund to the credit of the department of public health and human services for state matching funds to maximize federal funds for medicaid health services; and*

(b) *the balance in the state general fund.”*

**Section 3.** Section 15-31-322, MCA, is amended to read:

**“15-31-322. Water’s-edge election — inclusion of tax havens.** (1) Notwithstanding any other provisions of law, a taxpayer subject to the taxes imposed under this chapter may apportion its income under this section. A return under a water’s-edge election must include the income and apportionment factors of the following affiliated corporations only:

(1)(a) a corporation incorporated in the United States in a unitary relationship with the taxpayer and eligible to be included in a federal consolidated return as described in ~~sections 26 U.S.C. 1501 through 1505 of the Internal Revenue Code~~ that has more than 20% of its payroll and property assignable to locations inside the United States. For purposes of determining eligibility for inclusion in a federal consolidated return under this subsection (1)(a), the 80% stock ownership requirements of ~~section 26 U.S.C. 1504 of the Internal Revenue Code~~ must be reduced to ownership of over 50% of the voting stock directly or indirectly owned or controlled by an includable corporation.

(2)(b) domestic international sales corporations, as described in ~~sections 26 U.S.C. 991 through 994 of the Internal Revenue Code~~, and foreign sales corporations, as described in ~~sections 26 U.S.C. 921 through 927 of the Internal Revenue Code~~;

~~(3)(c)~~ export trade corporations, as described in ~~sections 26 U.S.C. 970 and 971 of the Internal Revenue Code;~~

~~(4)(d)~~ foreign corporations deriving gain or loss from disposition of a United States real property interest to the extent recognized under ~~section 26 U.S.C. 897 of the Internal Revenue Code;~~

~~(5)(e)~~ a corporation incorporated outside the United States if over 50% of its voting stock is owned directly or indirectly by the taxpayer and if more than 20% of the average of its payroll and property is assignable to a location inside the United States; or

*(f) a corporation that is in a unitary relationship with the taxpayer and that is incorporated in a tax haven, including Andorra, Anguilla, Antigua and Barbuda, Aruba, the Bahamas, Bahrain, Barbados, Belize, Bermuda, British Virgin Islands, Cayman Islands, Cook Islands, Turks and Caicos Islands, Dominica, Gibraltar, Grenada, Guernsey-Sark-Alderney, Isle of Man, Jersey, Liberia, Liechtenstein, Luxemburg, Maldives, Marshall Islands, Monaco, Montserrat, Nauru, Netherlands Antilles, Niue, Panama, Samoa, Seychelles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Tonga, U.S. Virgin Islands, and Vanuatu.-*

*(2) The department shall report biennially to the revenue and transportation interim committee with an update of countries that may be considered a tax haven under subsection (1)(f)."*

**Section 4.** Section 15-31-323, MCA, is amended to read:

**"15-31-323. Apportionment factors — inclusion of tax havens.** (1) For purposes of 15-31-322(1) and ~~(5)(1)(a) through (1)(e)~~, the location of payroll and property is determined under the individual state's laws and regulations that set forth the apportionment formulas used to assign net income subject to taxes on or measured by net income. If a state does not impose a tax on or measured by net income, apportionment is determined under this chapter.

*(2) For the purposes of 15-31-322(1)(f), income shifted to a tax haven, to the extent taxable, is considered income subject to apportionment."*

**Section 5.** Section 15-31-324, MCA, is amended to read:

**"15-31-324. Water's-edge election period — consent — change of election.** (1) A water's-edge election may be made by a taxpayer and is effective only if every affiliated corporation subject to the taxes imposed under this chapter consents to the election. Consent by the common parent of an affiliated group constitutes consent of all members of the group. An affiliated corporation that becomes subject to taxes under this chapter ~~subsequent to~~ after the water's-edge election is considered to have consented to the election. *The election must disclose the identity of the taxpayer and the identity of any affiliated corporation, including an affiliated corporation incorporated in a tax haven as set forth in 15-31-322(1)(f), in which the taxpayer owns directly or indirectly more than 50% of the voting stock of the affiliated corporation.*

~~(2) Each~~ Except as provided in subsections (3) and (4), each water's-edge election must be for 3-year renewable periods, ~~except as follows:~~

~~(a) No water's-edge election may be made for an income year beginning before October 1, 1987.~~

~~(b)(3)~~ A water's-edge election may be changed by a taxpayer ~~prior to~~ before the end of each 3-year period only with the permission of the department of revenue. In granting a change of election, the department shall impose

reasonable conditions that are necessary to prevent the avoidance of tax or clearly reflect income for the election period prior to the change.

(4) *A taxpayer subject to the provisions of 15-31-322(1)(f) who has a water's-edge election that is in effect for tax periods beginning both before and after [the effective date of this act] may rescind the election for any tax period beginning after [the effective date of this act].*"

**Section 6.** Section 15-31-326, MCA, is amended to read:

**"15-31-326. Domestic disclosure spreadsheet — inclusion of tax havens.** (1) The department of revenue may require taxpayers a taxpayer making a water's-edge election to submit within 6 months after the taxpayer files its federal income tax return a domestic disclosure spreadsheet to provide full disclosure of the income reported to each state for the year, the tax liability for each state, the method used for allocating or apportioning income to the states, and the identity of the water's-edge corporate group and those of its United States affiliated corporations.

(2) *The department may require a taxpayer subject to the provisions of 15-31-322(1)(f) to disclose the same information for tax havens as is required for states in subsection (1).*"

**Section 7. Applicability.** [This act] applies to tax periods beginning after December 31, 2003.

Approved April 26, 2003

## CHAPTER NO. 522

[HB 748]

AN ACT CLARIFYING AND REVISING THE LAWS RELATING TO THE DISTRIBUTION OF OIL AND NATURAL GAS PRODUCTION TAXES; CHANGING THE METHOD FOR DISTRIBUTING OIL AND NATURAL GAS PRODUCTION TAXES TO STATE FUNDS AND TO LOCAL TAXING UNITS; ESTABLISHING PERCENTAGE DISTRIBUTION AMOUNTS FOR LOCAL TAXING UNITS; PROVIDING A STATUTORY APPROPRIATION FOR THE DISTRIBUTION OF OIL AND NATURAL GAS PRODUCTION TAXES TO LOCAL TAXING UNITS; AMENDING SECTIONS 7-1-2111, 15-1-501, 15-36-304, 15-36-314, 15-36-315, 15-38-113, 15-38-202, 17-7-502, 75-10-743, 76-15-904, 82-11-135, 85-2-905, AND 90-2-1104, MCA; REPEALING SECTIONS 15-36-320 AND 15-36-324, 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. 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 [section 2] 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) 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 15-1-501, in the state special revenue fund for the purpose of paying expenses of the board, as provided in 82-11-135.

(3) (a) For tax year 2003 and succeeding tax years, the amount of oil and natural gas production taxes determined under subsection (1)(b) plus the phased-out amount distributed pursuant to 15-36-324(12)(b) as that section read on December 31, 2002, is allocated to each county according to the following schedule:

	2003	2004	2005	2006 and succeeding tax years
Big Horn	45.03%	45.04%	45.04%	45.05%
Blaine	57.56%	57.84%	58.11%	58.39%
Carbon	50.24%	49.59%	48.93%	48.27%
Chouteau	56.67%	57.16%	57.65%	58.14%
Custer	103.63%	92.27%	80.9%	69.53%
Daniels	48.31%	49.15%	49.98%	50.81%
Dawson	56.32%	53.48%	50.64%	47.79%
Fallon	39.89%	40.52%	41.15%	41.78%
Fergus	112.2%	97.86%	83.52%	69.18%
Garfield	54.51%	51.66%	48.81%	45.96%
Glacier	76.56%	70.65%	64.74%	58.83%
Golden Valley	55.5%	56.45%	57.41%	58.37%
Hill	66.97%	66.15%	65.33%	64.51%
Liberty	63.32%	61.53%	59.73%	57.94%
McCone	58.75%	55.81%	52.86%	49.92%
Musselshell	57.06%	54.25%	51.44%	48.64%
Petroleum	67.8%	61.21%	54.62%	48.04%
Phillips	53.3%	53.54%	53.78%	54.02%
Pondera	104.14%	87.51%	70.89%	54.26%
Powder River	64.7%	63.44%	62.17%	60.9%
Prairie	38.43%	39.08%	39.73%	40.38%
Richland	45.23%	45.97%	46.72%	47.47%
Roosevelt	46.75%	46.4%	46.06%	45.71%
Rosebud	37.41%	38.05%	38.69%	39.33%
Sheridan	46.64%	47.09%	47.54%	47.99%
Stillwater	56.05%	55.2%	54.35%	53.51%
Sweet Grass	58.23%	59.24%	60.24%	61.24%
Teton	53.01%	50.71%	48.4%	46.1%
Toole	56.2%	56.67%	57.14%	57.61%
Valley	59.82%	57.02%	54.22%	51.43%
Wibaux	47.71%	48.19%	48.68%	49.16%
Yellowstone	50.69%	49.37%	48.06%	46.74%
All other counties	50.15%	50.15%	50.15%	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 [section 2].

(4) The department shall, in accordance with the provisions of 15-1-501, 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 the fiscal year ending June 30, 2003, to be distributed as follows:

(i) a total of \$400,000 to the coal bed methane protection account established in 76-15-904; and

(ii) all remaining proceeds to the state general fund;

(b) for the fiscal year beginning July 1, 2003, through the fiscal year ending June 30, 2005, to be distributed as follows:

(i) 1.23% to the coal bed methane protection account established in 76-15-904;

(ii) 2.95% to the reclamation and development grants special revenue account established in 90-2-1104;

(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 20-25-423; and

(v) all remaining proceeds to the state general fund;

(c) for the fiscal year beginning July 1, 2005, 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) 5.90% to the reclamation and development grants special revenue account established in 90-2-1104;

(iii) 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 20-25-423; and

(iv) all remaining proceeds to the state general fund; and

(d) for fiscal years beginning after June 30, 2011, to be distributed as follows:

(i) 7.13% to the reclamation and development grants special revenue account established in 90-2-1104;

(ii) 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 20-25-423; and

(iii) all remaining proceeds to the state general fund.

**Section 2. Distribution of taxes to taxing units — appropriation.** (1) By the dates referred to in subsection (6), the department shall distribute oil and natural gas production taxes allocated under [section 1(3)] to each eligible county.

(2) (a) Each county treasurer shall distribute the amount of oil and natural gas production taxes designated under subsection (1), 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 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 provide to each county by May 31 of each year the amount of gross taxable value represented by all types of production taxed under 15-36-304 for the previous calendar year multiplied by 60%. The resulting value must be treated as taxable value for county classification purposes under 7-1-2111.

(8) The distribution to taxing units under this section is statutorily appropriated, as provided in 17-7-502, from the state special revenue fund.

**Section 3.** Section 7-1-2111, MCA, is amended to read:

**"7-1-2111. Classification of counties.** (1) For the purpose of regulating the compensation and salaries of all county officers, not otherwise provided for, and for fixing the penalties of officers' bonds, the counties of this state must be classified according to the taxable valuation of the property in the counties upon which the tax levy is made as follows:

(a) first class—all counties having a taxable valuation of \$50 million or more;

(b) second class—all counties having a taxable valuation of \$30 million or more and less than \$50 million;

(c) third class—all counties having a taxable valuation of \$20 million or more and less than \$30 million;

(d) fourth class—all counties having a taxable valuation of \$15 million or more and less than \$20 million;

(e) fifth class—all counties having a taxable valuation of \$10 million or more and less than \$15 million;

(f) sixth class—all counties having a taxable valuation of \$5 million or more and less than \$10 million;

(g) seventh class—all counties having a taxable valuation of less than \$5 million.

(2) As used in this section, "taxable valuation" means the taxable value of taxable property in the county as of the time of determination plus:

(a) that portion of the taxable value of the county on December 31, 1981, attributable to automobiles and trucks having a rated capacity of three-quarters of a ton or less;

(b) that portion of the taxable value of the county on December 31, 1989, attributable to automobiles and trucks having a manufacturer's rated capacity of more than three-quarters of a ton but less than or equal to 1 ton;

(c) that portion of the taxable value of the county on December 31, 1997, attributable to buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors;

(d) that portion of the taxable value of the county on December 31, 1997, attributable to trailers, pole trailers, and semitrailers with a declared weight of less than 26,000 pounds;

(e) the value provided by the department of revenue under ~~15-36-324(14)~~ [section 2(7)];

(f) 50% of the taxable value of the county on December 31, 1999, attributable to telecommunications property under 15-6-141;

(g) 50% of the taxable value in the county on December 31, 1999, attributable to electrical generation property under 15-6-141;

(h) the value provided by the department of revenue under 15-24-3001; and

~~(i)~~ (i) 6% of the taxable value of the county on January 1 of each tax year.”

**Section 4.** Section 15-1-501, MCA, is amended to read:

**“15-1-501. Disposition of money from certain designated license and other taxes.** (1) The state treasurer shall deposit to the credit of the state general fund in accordance with the provisions of subsection (3) all money received from the collection of:

(a) income taxes, interest, and penalties collected under chapter 30;

(b) all taxes, interest, and penalties collected under chapter 31;

(c) oil and natural gas production taxes distributed to the general fund under ~~15-36-324~~ [section 1];

(d) electrical energy producer’s license taxes under chapter 51;

(e) the retail telecommunications excise tax collected under Title 15, chapter 53, part 1;

(f) liquor license taxes under Title 16;

(g) fees from driver’s licenses, motorcycle endorsements, and duplicate driver’s licenses as provided in 61-5-121;

(h) estate taxes under Title 72, chapter 16; and

(i) fees based on the value of currency on deposit and tangible personal property held for safekeeping by a foreign capital depository as provided in 15-31-803.

(2) The department shall also deposit to the credit of the state general fund all money received from the collection of license taxes and all net revenue and receipts from all sources, other than certain fees, under ~~the operation of the Montana Alcoholic Beverage Code Title 16, chapters 1 through 4 and 6.~~

(3) Notwithstanding any other provision of law, the distribution of tax revenue must be made according to the provisions of the law governing allocation of the tax that were in effect for the period in which the tax revenue was recorded for accounting purposes. Tax revenue must be recorded as prescribed by the department of administration, pursuant to 17-1-102(2) and (4), in accordance with generally accepted accounting principles.

(4) All refunds of taxes must be attributed to the funds in which the taxes are currently being recorded. All refunds of interest and penalties must be attributed to the funds in which the interest and penalties are currently being recorded.”

**Section 5.** Section 15-36-304, MCA, is amended to read:

**“15-36-304. Production tax rates imposed on oil and natural gas.** (1) The production of oil and natural gas is taxed as provided in this section. The tax is distributed as provided in ~~15-36-324~~ [sections 1 and 2].

(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 begins 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 rate under subsection (2)(c)(i) on production from a horizontally completed well for the first 18 months of production begins 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) stripper well exemption production	0.5%	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 begins 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 begins following the last day of the calendar month immediately preceding the month in which oil is pumped or flows, ~~provided that~~ if the well has been certified as a horizontally completed well to the department by the board.

(ii) The reduced tax rate under subsection (5)(f)(i) on oil production from a horizontally recompleted well for the first 18 months of production begins following the last day of the calendar month immediately preceding the month in which oil is pumped or flows, ~~provided that~~ 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 each barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than \$30 a barrel. If the price of oil is equal to or greater than \$30 a barrel in a calendar quarter as determined in subsection (6)(d), 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. Stripper well exemption production is taxed as provided in subsection (5)(c) *only* if the average price for a barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than \$38 a barrel.

(d) For the purposes of subsection (6)(c), the average price for each barrel must be computed by dividing the sum of the daily price for west Texas intermediate crude oil as reported in the Wall Street Journal for the calendar quarter by the number of days on which the price was reported in the quarter.

(7) The tax rates imposed under subsections (2) and (5) on working interest owners and nonworking interest owners must be adjusted to include the privilege and license tax adopted by the board of oil and gas conservation pursuant to 82-11-131."

**Section 6.** Section 15-36-314, MCA, is amended to read:

**"15-36-314. Deficiency assessment — local government severance tax deficiency assessment — review — penalty and interest.** (1) ~~When~~ *If* the department determines that the amount of the tax due, including the amount due for the local government severance tax, is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice, pursuant to 15-1-211, of the additional tax proposed to be assessed. The notice must contain a statement that if payment is not made, a warrant for distraint may be filed. The taxpayer may seek review of the determination pursuant to 15-1-211.

(2) (a) The department shall collect deficiency assessments of the local government severance tax in the same manner as it collects oil and natural gas production tax deficiency assessments.

(b) Any local government severance taxes that are collected on oil and natural gas production occurring after December 31, 1988, and before January 1, 1995, must be treated as current revenue for the purposes of distribution and must be distributed pursuant to ~~15-36-324(12)(a)~~ [section 2].

(3) Penalty and interest must be added to a deficiency assessment as provided in 15-1-216.”

**Section 7.** Section 15-36-315, MCA, is amended to read:

**“15-36-315. Credit or refund for overpayment — refund from county — interest on overpayment.** (1) If the department determines that the amount of tax, penalty, or interest due for any taxable period is less than the amount paid, the amount of the overpayment must be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) (a) The amount of an overpayment credited against any tax, penalty, or interest due for any tax period or any refund or portion of a refund, which has not been distributed pursuant to ~~15-36-324~~ [section 2], must be withheld from the current distribution made pursuant to ~~15-36-324~~ [section 2].

(b) If the amount of the refund reduces the amount of tax previously distributed pursuant to ~~15-36-324~~ [section 2] and if the current distribution, if any, is insufficient to offset the refund, then the department shall demand the amount of the refund from the county to which the tax was originally distributed. The county treasurer shall remit the amount demanded within 30 days of the receipt of notice from the department.

(3) A refund that is paid by the department for an overpayment of the local government severance tax for oil or natural gas production occurring after December 31, 1988, and before January 1, 1995, must be treated as issued for the current distribution period for distribution purposes, and the refund must be apportioned in the same manner as taxes are distributed pursuant to ~~15-36-324(12)(a)~~ [section 2].

(4) Except as provided in subsection (5), interest must be allowed on overpayments at the same rate as is charged on unpaid taxes provided in 15-1-216 beginning from the due date of the return or from the date of overpayment, whichever date is later, to the date on which the department approves refunding or crediting of the overpayment.

(5) (a) Interest may not accrue during any period in 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.

(b) Interest is not allowed:

(i) if the overpayment is refunded within 6 months from the date on which the return is due or from the date on which the return is filed, whichever is later; or

(ii) if the amount of interest is less than \$1.”

**Section 8.** Section 15-38-113, MCA, is amended to read:



**“15-38-113. Exemption from resource indemnity and ground water assessment tax.** (1) A person who has paid the license tax on a metal mine under the provisions of Title 15, chapter 37, part 1, is exempt from the resource indemnity and ground water assessment tax.

(2) *A person who has paid the tax on oil and natural gas production under the provisions of Title 15, chapter 36, part 3, is exempt from the resource indemnity and ground water assessment tax.”*

**Section 9.** Section 15-38-202, MCA, is amended to read:

**“15-38-202. (Temporary) Investment of resource indemnity trust fund — expenditure — minimum balance.** (1) All money paid into the resource indemnity trust fund, ~~including money payable into the fund under the provisions of 15-36-324 and 15-37-117,~~ must be invested at the discretion of the board of investments. Only the net earnings, excluding unrealized gains and losses, may be appropriated and expended until the fund balance, excluding unrealized gains and losses, reaches \$100 million. ~~Thereafter~~ *After the fund balance reaches \$100 million,* all net earnings, excluding unrealized gains and losses, and all receipts may be appropriated by the legislature and expended, provided that the fund balance, excluding unrealized gains and losses, may never be less than \$100 million.

(2) (a) At the beginning of each fiscal year, there is allocated from the interest income of the resource indemnity trust fund:

(i) \$240,000, which is statutorily appropriated, as provided in 17-7-502, to be deposited into the renewable resource grant and loan program state special revenue account to support the operations of the environmental science-water quality instructional programs at Montana state university-northern, to be used for support costs, for matching funds necessary to attract additional funds to further expand statewide impact, and for enhancement of the facilities related to the programs. Any amount of the appropriation in this subsection (2)(a)(i) that is not pledged to repay bonds issued prior to January 1, 1999, may be deposited in a permanent fund account, the income from which may be used for the purposes provided in this subsection.

(ii) \$2 million to be deposited into the renewable resource grant and loan program state special revenue account, created by 85-1-604, for the purpose of making grants;

(iii) for the fiscal year beginning July 1, 2002, through the fiscal year ending June 30, 2005, \$1.2 million and for fiscal years beginning on or after July 1, 2005, \$1.5 million to be deposited into the reclamation and development grants special revenue account, created by 90-2-1104, for the purpose of making grants;

(iv) \$300,000 to be deposited into the ground water assessment account created by 85-2-905; and

(v) for the fiscal year beginning July 1, 2002, through the fiscal year ending June 30, 2005, \$350,000 and for fiscal years beginning on or after July 1, 2005, \$500,000 to the department of fish, wildlife, and parks for the purposes of 87-1-283. The future fisheries review panel shall approve and fund qualified mineral reclamation projects before other types of qualified projects.

(b) At the beginning of each biennium, there is allocated from the interest income of the resource indemnity trust fund:

(i) an amount not to exceed \$175,000 to the environmental contingency account pursuant to the conditions of 75-1-1101;

(ii) an amount not to exceed \$50,000 to the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161; and

(iii) \$500,000 to be deposited into the water storage state special revenue account created by 85-1-631.

(c) The remainder of the interest income is allocated as follows:

(i) For the fiscal year beginning July 1, 2002, through the fiscal year ending June 30, 2005, 25.5% and for fiscal years beginning on or after July 1, 2005, 30% of the interest income of the resource indemnity trust fund must be allocated to the renewable resource grant and loan program state special revenue account created by 85-1-604.

(ii) For the fiscal year beginning July 1, 2002, through the fiscal year ending June 30, 2005, 22% and for fiscal years beginning on or after July 1, 2005, 26% of the interest income of the resource indemnity trust fund must be allocated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.

(iii) For the fiscal year beginning July 1, 2002, through the fiscal year ending June 30, 2005, 45% and for fiscal years beginning on or after July 1, 2005, 35% of the interest income from the resource indemnity trust fund must be allocated to the reclamation and development grants account provided for in 90-2-1104.

(iv) For the fiscal year beginning July 1, 2002, through the fiscal year ending June 30, 2005, 7.5% and for fiscal years beginning on or after July 1, 2005, 9% of the interest income of the resource indemnity trust fund must be allocated to the environmental quality protection fund provided for in 75-10-704.

(3) Any formal budget document prepared by the legislature or the executive branch that proposes to appropriate funds other than as provided for by the allocations in subsection (2) must specify the amount of money from each allocation that is proposed to be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the legislative appropriation process or otherwise during a legislative session. (Terminates July 1, 2009—sec. 9, Ch. 529, L. 1999.)

**15-38-202. (Effective July 1, 2009) Investment of resource indemnity trust fund — expenditure — minimum balance.** (1) All money paid into the resource indemnity trust fund, ~~including money payable into the fund under the provisions of 15-36-324 and 15-37-117,~~ must be invested at the discretion of the board of investments. Only the net earnings, excluding unrealized gains and losses, may be appropriated and expended until the fund balance, excluding unrealized gains and losses, reaches \$100 million. ~~Thereafter~~ *After the fund balance reaches \$100 million,* all net earnings, excluding unrealized gains and losses, and all receipts may be appropriated by the legislature and expended, provided that the fund balance, excluding unrealized gains and losses, may never be less than \$100 million.

(2) (a) At the beginning of each fiscal year, there is allocated from the interest income of the resource indemnity trust fund:

(i) \$240,000, which is statutorily appropriated, as provided in 17-7-502, to be deposited into the renewable resource grant and loan program state special revenue account to support the operations of the environmental science-water quality instructional programs at Montana state university-northern, to be used for support costs, for matching funds necessary to attract additional funds to further expand statewide impact, and for enhancement of the facilities related to the programs. Any amount of the appropriation in this subsection

(2)(a)(i) that is not pledged to repay bonds issued prior to January 1, 1999, may be deposited in a permanent fund account, the income from which may be used for the purposes provided in this subsection.

(ii) \$2 million to be deposited into the renewable resource grant and loan program state special revenue account, created by 85-1-604, for the purpose of making grants;

(iii) \$1.5 million to be deposited into the reclamation and development grants special revenue account, created by 90-2-1104, for the purpose of making grants; and

(iv) \$300,000 to be deposited into the ground water assessment account created by 85-2-905.

(b) At the beginning of each biennium, there is allocated from the interest income of the resource indemnity trust fund:

(i) an amount not to exceed \$175,000 to the environmental contingency account pursuant to the conditions of 75-1-1101;

(ii) an amount not to exceed \$50,000 to the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161; and

(iii) \$500,000 to be deposited into the water storage state special revenue account created by 85-1-631.

(c) The remainder of the interest income is allocated as follows:

(i) Thirty percent of the interest income of the resource indemnity trust fund must be allocated to the renewable resource grant and loan program state special revenue account created by 85-1-604.

(ii) Twenty-six percent of the interest income of the resource indemnity trust fund must be allocated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.

(iii) Thirty-five percent of the interest income from the resource indemnity trust fund must be allocated to the reclamation and development grants account provided for in 90-2-1104.

(iv) Nine percent of the interest income of the resource indemnity trust fund must be allocated to the environmental quality protection fund provided for in 75-10-704.

(3) Any formal budget document prepared by the legislature or the executive branch that proposes to appropriate funds other than as provided for by the allocations in subsection (2) must specify the amount of money from each allocation that is proposed to be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the legislative appropriation process or otherwise during a legislative session. (Terminates June 30, 2014—sec. 5, Ch. 497, L. 1999.)

**15-38-202. (Effective July 1, 2014) Investment of resource indemnity trust fund — expenditure — minimum balance.** (1) All money paid into the resource indemnity trust fund ~~including money payable into the fund under the provisions of 15-36-324 and 15-37-117,~~ must be invested at the discretion of the board of investments. Only the net earnings, excluding unrealized gains and losses, may be appropriated and expended until the fund balance, excluding unrealized gains and losses, reaches \$100 million. ~~Thereafter~~ *After the fund balance reaches \$100 million,* all net earnings, excluding unrealized gains and

losses, and all receipts may be appropriated by the legislature and expended, provided that the fund balance, excluding unrealized gains and losses, may never be less than \$100 million.

(2) (a) At the beginning of each fiscal year, there is allocated from the interest income of the resource indemnity trust fund:

(i) \$2 million to be deposited into the renewable resource grant and loan program state special revenue account, created by 85-1-604, for the purpose of making grants;

(ii) \$1.5 million to be deposited into the reclamation and development grants special revenue account, created by 90-2-1104, for the purpose of making grants; and

(iii) \$300,000 to be deposited into the ground water assessment account created by 85-2-905.

(b) At the beginning of each biennium, there is allocated from the interest income of the resource indemnity trust fund:

(i) an amount not to exceed \$175,000 to the environmental contingency account pursuant to the conditions of 75-1-1101;

(ii) an amount not to exceed \$50,000 to the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161; and

(iii) \$500,000 to be deposited into the water storage state special revenue account created by 85-1-631.

(c) The remainder of the interest income is allocated as follows:

(i) Thirty percent of the interest income of the resource indemnity trust fund must be allocated to the renewable resource grant and loan program state special revenue account created by 85-1-604.

(ii) Twenty-six percent of the interest income of the resource indemnity trust fund must be allocated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.

(iii) Thirty-five percent of the interest income from the resource indemnity trust fund must be allocated to the reclamation and development grants account provided for in 90-2-1104.

(iv) Nine percent of the interest income of the resource indemnity trust fund must be allocated to the environmental quality protection fund provided for in 75-10-704.

(3) Any formal budget document prepared by the legislature or the executive branch that proposes to appropriate funds other than as provided for by the allocations in subsection (2) must specify the amount of money from each allocation that is proposed to be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the legislative appropriation process or otherwise during a legislative session.”

**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: 2-15-151; 2-17-105; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; ~~15-36-324~~ [section 2]; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-6-703; 53-24-206; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; 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 Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, the inclusion of 15-35-108 and 90-6-710 terminates June 30, 2005; pursuant to sec. 17, Ch. 414, L. 2001, the inclusion of 2-15-151 terminates December 31, 2006; and pursuant to sec. 2, Ch. 594, L. 2001, the inclusion of 17-3-241 becomes effective July 1, 2003.)"

**Section 11.** Section 75-10-743, MCA, is amended to read:

**"75-10-743. (Temporary) Orphan share state special revenue account — reimbursement of claims — payment of department costs.** (1) There is an orphan share account in the state special revenue fund established in 17-2-102 that is to be administered by the department. Money in the account is available to the department by appropriation and must be used to reimburse remedial action costs claimed pursuant to 75-10-742 through 75-10-752 and to pay costs incurred by the department in defending the orphan share.

(2) There must be deposited in the orphan share account:

(a) all penalties assessed pursuant to 75-10-750(12);

(b) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202;

(c) funds allocated from the resource indemnity and ground water assessment tax proceeds provided for in 15-38-106;

(d) funds received from the distribution of oil and natural gas production taxes pursuant to [section 1];

(e) unencumbered funds remaining in the abandoned mines state special revenue account;

~~(f)~~ interest income on the account;

~~(g)~~ funds received from settlements pursuant to 75-10-719(7); and

~~(h)~~ funds received from reimbursement of the department's orphan share defense costs pursuant to subsection (6).

(3) If the orphan share fund contains sufficient money, valid claims must be reimbursed subsequently in the order in which they were received by the department. If the orphan share fund does not contain sufficient money to reimburse claims for completed remedial actions, a reimbursement may not be made and the orphan share fund, the department, and the state are not liable for making any reimbursement for the costs. The department and the state are not liable for any penalties if the orphan share fund does not contain sufficient money to reimburse claims, and interest may not accrue on outstanding claims.

(4) Except as provided in subsection (8), claims may not be submitted and remedial action costs may not be reimbursed from the orphan share fund until all remedial actions, except for operation and maintenance, are completed at a facility.

(5) Reimbursement from the orphan share fund must be limited to actual documented remedial action costs incurred after the date of petition provided in 75-10-745. Reimbursement may not be made for attorney fees, legal costs, or operation and maintenance costs.

(6) (a) The department's costs incurred in defending the orphan share must be paid by the persons participating in the allocation under 75-10-742 through 75-10-752 in proportion to their allocated shares. The orphan share fund is responsible for a portion of the department's costs incurred in defending the orphan share in proportion to the orphan share's allocated share, as follows:

(i) If sufficient funds are available in the orphan share fund, the orphan share fund must pay the department's costs incurred in defending the orphan share in proportion to the share of liability allocated to the orphan share.

(ii) If sufficient funds are not available in the orphan share fund, persons participating in the allocation under 75-10-742 through 75-10-752 shall pay all the orphan share's allocated share of the department's costs incurred in defending the orphan share in proportion to each person's allocated share of liability.

(b) A person who pays the orphan share's proportional share of costs has a claim against the orphan share fund and must be reimbursed as provided in subsection (3).

(7) (a) ~~On August 21, 2002, \$1,000 is transferred from the orphan share fund to the general fund.~~ If sufficient money remains in the orphan share fund on June 29, 2003, \$999,000 must be transferred to the general fund.

(b) If any money remains in the orphan share fund after June 30, 2005, and after outstanding claims are paid, the money must be deposited in the general fund.

(8) If the lead liable person under 75-10-746 presents evidence to the department that the person cannot complete the remedial actions without

partial reimbursement and that a delay in reimbursement will cause undue financial hardship on the person, the department may allow the submission of claims and may reimburse the claims prior to the completion of all remedial actions. A person is not eligible for early reimbursement unless the person is in substantial compliance with all department-approved remedial action plans.

(9) A person participating in the allocation process who received funds under the mixed funding pilot program provided for in sections 14 through 20, Chapter 584, Laws of 1995, may not claim or receive reimbursement from the orphan share fund for the amount of funds received under the mixed funding pilot program that are later attributed to the orphan share under the allocation process. ~~eff~~ (Terminates June 30, 2005—sec. 30, Ch. 415, L. 1997.)”

**Section 12.** Section 76-15-904, MCA, is amended to read:

**“76-15-904. Coal bed methane protection account — use.** (1) There is a coal bed methane protection account in the state special revenue fund.

(2) ~~At the beginning of each fiscal year, there~~ *There* must be deposited in the account ~~a total of \$400,000 of~~ the proceeds from the distribution of oil and natural gas production taxes, as provided in ~~15-36-324 [section 1]~~.

(3) All money paid into the account must be invested by the board of investments. Earnings from investments must be deposited in the account.

(4) Subject to the conditions of subsection (5), money deposited in the account must be used to compensate landowners and water right holders for damages attributable to coal bed methane development as provided in this part.

(5) Money deposited in the fund and earnings of the fund may not be expended until after June 30, 2005. For fiscal years beginning after June 30, 2005, principal and earnings may be expended only in the case of an emergency. For fiscal years beginning after June 30, 2011, principal and earnings in the account may be expended for any purpose authorized pursuant to this part.

(6) Money in the account must be appropriated to the department for use by conservation districts that have private landowners or water right holders who qualify for compensation as provided in 76-15-905. (Subsection (2) terminates June 30, 2011—sec. 10, Ch. 531, L. 2001.)”

**Section 13.** Section 82-11-135, MCA, is amended to read:

**“82-11-135. Money earmarked for board expenses.** The state treasurer shall deposit all money distributed to the board under ~~15-36-324 [section 1]~~ and collected under this chapter in the state special revenue fund. The money must be used for the purpose of paying all expenses of the board and for no other purpose. The board shall use the money subject to biennial appropriations by the legislature. Income and interest from investment of the board’s money in the state special revenue fund must be credited to the board.”

**Section 14.** Section 85-2-905, MCA, is amended to read:

**“85-2-905. Ground water assessment account.** (1) There is a ground water assessment account within the special revenue fund established in 17-2-102. The Montana bureau of mines and geology is authorized to expend amounts from the account necessary to carry out the purposes of this part.

(2) The account may be used by the Montana bureau of mines and geology only to carry out the provisions of this part.

(3) Subject to the direction of the ground water assessment steering committee, the Montana bureau of mines and geology shall investigate

opportunities for the participation and financial contribution of agencies of federal and local governments to accomplish the purposes of this part.

(4) There must be deposited in the account:

(a) at the beginning of each fiscal year, \$366,000 of the proceeds from the resource indemnity and ground water assessment tax, as authorized by 15-38-106, and \$300,000 of the interest earnings from the resource indemnity trust fund, as authorized by 15-38-202, unless at the beginning of the fiscal year the unobligated cash balance in the ground water assessment account:

(i) equals or exceeds \$666,000, in which case an allocation may not be made and the proceeds must be deposited in the resource indemnity trust fund established by 15-38-201; or

(ii) is less than \$666,000, in which case an amount equal to the difference between the unobligated cash balance and \$666,000 must be allocated to the ground water assessment account and any remaining amount must be deposited in the resource indemnity trust fund established by 15-38-201;

(b) funds provided by state government agencies and by local governments to carry out the purposes of this part;

(c) proceeds allocated to the account as provided in ~~15-36-324~~ and 15-38-106; and

(d) funds provided by any other public or private sector organization or person in the form of gifts, grants, or contracts specifically designated to carry out the purposes of this part.”

**Section 15.** Section 90-2-1104, MCA, is amended to read:

**“90-2-1104. Reclamation and development grants account.** (1) There is a reclamation and development grants special revenue account within the state special revenue fund established in 17-2-102.

(2) There must be paid into the reclamation and development grants account money allocated from:

(a) the interest income of the resource indemnity trust fund under the provisions of 15-38-202;

(b) the resource indemnity and ground water assessment tax under provisions of 15-38-106;

(c) the metal mines license tax proceeds as provided in 15-37-117(1)(d); and

(d) the oil and gas production tax as provided in ~~15-36-324 and 15-38-106~~ [section 1].

(3) Appropriations may be made from the reclamation and development grants account for the following purposes:

(a) grants for designated projects; and

(b) administrative expenses, including salaries and expenses for personnel, equipment, office space, and other expenses necessarily incurred in the administration of the grants program. These expenses may be funded before funding of projects.”

**Section 16. Repealer.** Sections 15-36-320 and 15-36-324, MCA, are repealed.



**Section 17. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 15, chapter 36, part 3, and the provisions of Title 15, chapter 36, part 3, apply to [sections 1 and 2].

**Section 18. Coordination instruction.** If House Bill No. 584 and [this act] are both passed and approved, then [section 1 of this act] is amended to read:

**“Section 1. 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 [section 2] 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) 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 15-1-501, in the state special revenue fund for the purpose of paying expenses of the board, as provided in 82-11-135.

(3) (a) For tax year 2003 and succeeding tax years, the amount of oil and natural gas production taxes determined under subsection (1)(b) plus the phased-out amount distributed pursuant to 15-36-324(12)(b) as that section read on December 31, 2002, is allocated to each county according to the following schedule:

	2003	2004	2005	2006 and succeeding tax years
Big Horn	45.03%	45.04%	45.04%	45.05%
Blaine	57.56%	57.84%	58.11%	58.39%
Carbon	50.24%	49.59%	48.93%	48.27%
Chouteau	56.67%	57.16%	57.65%	58.14%
Custer	103.63%	92.27%	80.9%	69.53%
Daniels	48.31%	49.15%	49.98%	50.81%
Dawson	56.32%	53.48%	50.64%	47.79%
Fallon	39.89%	40.52%	41.15%	41.78%
Fergus	112.2%	97.86%	83.52%	69.18%
Garfield	54.51%	51.66%	48.81%	45.96%
Glacier	76.56%	70.65%	64.74%	58.83%
Golden Valley	55.5%	56.45%	57.41%	58.37%
Hill	66.97%	66.15%	65.33%	64.51%
Liberty	63.32%	61.53%	59.73%	57.94%
McCone	58.75%	55.81%	52.86%	49.92%
Musselshell	57.06%	54.25%	51.44%	48.64%
Petroleum	67.8%	61.21%	54.62%	48.04%
Phillips	53.3%	53.54%	53.78%	54.02%
Pondera	104.14%	87.51%	70.89%	54.26%
Powder River	64.7%	63.44%	62.17%	60.9%
Prairie	38.43%	39.08%	39.73%	40.38%

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Richland	45.23%	45.97%	46.72%	47.47%
Roosevelt	46.75%	46.4%	46.06%	45.71%
Rosebud	37.41%	38.05%	38.69%	39.33%
Sheridan	46.64%	47.09%	47.54%	47.99%
Stillwater	56.05%	55.2%	54.35%	53.51%
Sweet Grass	58.23%	59.24%	60.24%	61.24%
Teton	53.01%	50.71%	48.4%	46.1%
Toole	56.2%	56.67%	57.14%	57.61%
Valley	59.82%	57.02%	54.22%	51.43%
Wibaux	47.71%	48.19%	48.68%	49.16%
Yellowstone	50.69%	49.37%	48.06%	46.74%
All other counties	50.15%	50.15%	50.15%	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 [section 2].

(4) The department shall, in accordance with the provisions of 15-1-501, 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 the fiscal year ending June 30, 2003, to be distributed as follows:

(i) a total of \$400,000 to the coal bed methane protection account established in 76-15-904; and

(ii) all remaining proceeds to the state general fund;

(b) for the fiscal year beginning July 1, 2003, 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) 2.95% to the reclamation and development grants special revenue account established in 90-2-1104;

(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 20-25-423; and

(v) all remaining proceeds to the state general fund;

(c) for fiscal years beginning after June 30, 2011, to be distributed as follows:

(i) 4.18% to the reclamation and development grants special revenue account established in 90-2-1104;

(ii) 2.95% to the orphan share account established in 75-10-743;

(iii) 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 20-25-423; and

(iv) all remaining proceeds to the state general fund.”

**Section 19. 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 20. Effective date.** [This act] is effective on passage and approval.

**Section 21. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to tax revenue derived from oil and natural gas production occurring after December 31, 2002.

Approved April 26, 2003

## CHAPTER NO. 523

[SB 46]

AN ACT REMOVING THE REQUIREMENT THAT A COUNTY MUST ENTER INTO A CONTRACT FOR CERTAIN LARGE PURCHASES OR CONSTRUCTION CONTRACTS; AMENDING SECTION 7-5-2301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 7-5-2301, MCA, is amended to read:

**“7-5-2301. Competitive, advertised bidding required for certain large purchases or construction contracts.** (1) Except as provided in 7-5-2304, a contract ~~must be entered into by a county~~ for the purchase of any vehicle, road machinery or other machinery, apparatus, appliances, equipment, or materials or supplies or ~~the~~ for construction, repair, or maintenance ~~of any building, road, or bridge~~ in excess of \$50,000 ~~and~~ may not be entered into by a county governing body without first publishing a notice calling for bids.

(2) The notice must be published as provided in 7-1-2121.

(3) Subject to 7-5-2309, every contract subject to bidding must be let to the lowest ~~and best~~ responsible bidder.”

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

Approved April 27, 2003

## CHAPTER NO. 524

[SB 138]

AN ACT REVISING THE LAWS RELATING TO ALTERNATIVE ENERGY AND ENERGY CONSERVATION TAX POLICY; PROVIDING THAT GENERATION FACILITIES THAT HAVE 1 MEGAWATT OR GREATER CAPACITY POWERED BY AN ALTERNATIVE RENEWABLE ENERGY SOURCE ARE NOT EXEMPT FROM PROPERTY TAXES UNDER THE GENERAL PROPERTY TAX EXEMPTION LAWS BUT CONTINUE TO BE SUBJECT TO NEW AND EXPANDING INDUSTRY PROPERTY TAX INCENTIVES; REVISING THE DEDUCTION FOR ENERGY-CONSERVATION INVESTMENTS AND THE CREDITS FOR ENERGY-CONSERVING EXPENDITURES BY ELIMINATING THE TAX SAVING CEILING FOR THE DEDUCTION AND THE CARRYFORWARD PROVISION OF THE CREDIT; PROVIDING THAT PROPERTY PURCHASED UNDER THE COMMERCIAL OR NET METERING SYSTEM INVESTMENT CREDIT DOES NOT HAVE TO QUALIFY AS SPECIAL DEPRECIABLE PROPERTY UNDER THE INTERNAL REVENUE CODE OF 1954; AMENDING SECTIONS 15-6-225, 15-32-104, 15-32-109, AND

15-32-402, 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 15-6-225, MCA, is amended to read:

**“15-6-225. Energy equipment exemption.** (1) ~~(a) Except as provided in subsection (1)(b), the machinery Machinery and equipment used in a qualifying generation facilities built and operated after July 1, 2001, are exempt from taxation.~~

~~(b)~~—A generation facility that has a nameplate capacity of less than 1 megawatt of electrical energy is exempt from taxation for 5 years after the generation of electricity begins.

(2) (a) For the purposes of this section, “generation facility” includes any combination of a generator or generators, associated prime movers, and other associated machinery and equipment that are normally operated together to produce electric power, but does not include the owner’s business improvements and personal property.

(b) To qualify for the exemption under this section, the generation facilities must be powered by an alternative renewable energy source, as defined in 90-4-102.”

**Section 2.** Section 15-32-104, MCA, is amended to read:

**“15-32-104. Limitations on deduction and credit.** Tax treatment under 15-32-103 and 15-32-109 is limited to:

~~(1) capital investments made after January 1, 1975;~~

~~(2) persons and firms not primarily engaged in the provision of gas or electricity derived from fossil fuel extraction or conventional hydroelectric development; and~~

~~(3) a ceiling of \$100,000 in tax savings per year to any one person or firm.”~~

**Section 3.** Section 15-32-109, MCA, is amended to read:

**“15-32-109. Credit for energy-conserving expenditures.** (1) Subject to the restrictions of ~~subsections subsection (2) and (3),~~ a resident individual taxpayer may take a credit against the taxpayer’s tax liability under chapter 30 for 25% of the taxpayer’s expenditure for a capital investment in the physical attributes of a building or the installation of a water, heating, or cooling system in the building, so long as either type of investment is for an energy conservation purpose, in an amount not to exceed \$500.

(2) The credit ~~or the sum of the credits~~ under subsection (1):

(a) may not exceed the taxpayer’s tax liability; and

(b) is subject to the provisions of 15-32-104.

~~(3) The credit allowed under this section may be used as a carryforward against taxes imposed under chapter 30 for the 7 succeeding tax years. The entire amount of the credit not used in the year that it was earned must be carried first to the earliest tax year in which the credit may be applied and then to each succeeding tax year.”~~

**Section 4.** Section 15-32-402, MCA, is amended to read:

**“15-32-402. Commercial or net metering system investment credit — alternative energy systems.** (1) An individual, corporation, partnership, or

small business corporation as defined in 15-30-1101 that makes an investment of \$5,000 or more in ~~certain depreciable~~ property ~~qualifying that is depreciable~~ under ~~section 38 of the Internal Revenue Code of 1954, as amended,~~ for a commercial system or a net metering system, as defined in 69-8-103, that is located in Montana and that generates energy by means of an alternative renewable energy source, as defined in 90-4-102, is entitled to a tax credit against taxes imposed by 15-30-103 or 15-31-121 in an amount equal to 35% of the eligible costs, to be taken as a credit only against taxes due as a consequence of taxable or net income produced by one of the following:

(a) manufacturing plants located in Montana that produce alternative energy generating equipment;

(b) a new business facility or the expanded portion of an existing business facility for which the alternative energy generating equipment supplies, on a direct contract sales basis, the basic energy needed; or

(c) the alternative energy generating equipment in which the investment for which a credit is being claimed was made.

(2) For purposes of determining the amount of the tax credit that may be claimed under subsection (1), eligible costs include only those expenditures ~~that qualify under section 38 of the Internal Revenue Code of 1954, as amended,~~ and that are associated with the purchase, installation, or upgrading of:

(a) generating equipment;

(b) safety devices and storage components;

(c) transmission lines necessary to connect with existing transmission facilities; and

(d) transmission lines necessary to connect directly to the purchaser of the electricity when no other transmission facilities are available.

(3) Eligible costs under subsection (2) must be reduced by the amount of any grants provided by the state or federal government for the system."

**Section 5. Coordination instruction.** (1) If House Bill No. 391 and [this act] are both passed and approved, then [section 2 of House Bill No. 391], amending 15-32-402, is void.

(2) If Senate Bill No. 146 and [this act] are both passed and approved then:

(a) [section 4 of Senate Bill No. 146], amending 15-32-402, is void; and

(b) the reference to 90-4-102 in [section 4 of this act], amending 15-32-402, is changed to 15-6-225.

**Section 6. Effective date.** [This act] is effective on passage and approval.

**Section 7. Retroactive applicability.** [Sections 1 and 4] apply retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2001.

Approved April 26, 2003

## CHAPTER NO. 525

[SB 320]

AN ACT ALLOWING A MUNICIPALITY TO ADJUST BASE TAXABLE VALUE IN CERTAIN CASES OF TAX INCREMENT FINANCING FOR

WHICH NO BONDS WERE ISSUED; AMENDING SECTION 7-15-4293, 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 7-15-4293, MCA, is amended to read:

**“7-15-4293. Adjustment of base taxable value following change of law — option if bonds not issued.** (1) If the base taxable value of an urban renewal area or an industrial district is affected after its original determination by a statutory, administrative, or judicial change in the method of appraising property, the tax rate applied to it, the tax exemption status of property, or the taxable valuation of property if the change in taxable valuation is based on conditions existing at the time the base year was established, the governing body of the municipality may request the department of revenue or its agents to estimate the base taxable value so that the tax increment resulting from the increased incremental value is sufficient to pay all principal and interest on the bonds as those payments become due.

(2) *In cases of tax increment financing districts that were created on or after January 1, 1998, and before July 1, 2001, for which bonds were not issued, a municipality may adjust the base taxable value to account for a loss of taxable value resulting from a statutory change if the municipality has given notice of and has held a hearing on the proposed change.”*

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

**Section 3. Termination.** [This act] terminates June 30, 2003.

Approved April 26, 2003

## CHAPTER NO. 526

[SB 384]

AN ACT ALLOWING A CITY OR TOWN TO EXTEND, RENEW, OR AMEND AN AGREEMENT FOR THE SUPERVISION OR OPERATION OF A PHYSICAL PLANT THAT PROVIDES WATER, SEWER, OR POWER SERVICES TO THE MUNICIPALITY WITHOUT PROCEEDING UNDER PUBLIC BIDDING PROCEDURES IN CERTAIN INSTANCES; AND AMENDING SECTION 7-5-4301, MCA.

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

**Section 1.** Section 7-5-4301, MCA, is amended to read:

**“7-5-4301. Power to enter and execute contracts.** (1) ~~The~~ A city or town council ~~has power~~ ~~is authorized~~ to make any ~~and all~~ contracts necessary to carry into effect the *applicable* powers granted by this ~~code~~ *chapter* and to provide for the manner of executing the ~~same~~ *contracts*.

(2) (a) All necessary contracts for professional, technical, engineering, ~~and~~ or legal services are excluded from the provisions of 7-5-4302 through 7-5-4304, 7-5-4306, and 7-5-4307. ~~Provided, however~~ *However*, contracts ~~wherein in~~ *which* the value of the majority of the services to be rendered constitute services other than professional, technical, engineering, ~~and~~ or legal services must be awarded under the bidding procedure provided for in 7-5-4302 through 7-5-4304, 7-5-4306, and 7-5-4307.

(b) (i) *Except as provided in subsection (2)(b)(ii), supervision ~~Supervision~~ over or operation of a physical plant that provides water, sewer, or power services to a municipality does not constitute a service excluded under the provisions of subsection (2)(a).*

(ii) *A city, town, or municipality may extend, renew, or amend a contract or series of contracts for the supervision or operation of a physical plant that provides water, sewer, or power services without proceeding under the bidding procedure provided for in 7-5-4302 through 7-5-4304, 7-5-4306, and 7-5-4307 if:*

(A) *one or more of the contracts were awarded to the entity in accordance with the competitive bidding procedures provided in 7-5-4302 through 7-5-4304, 7-5-4306, and 7-5-4307; and*

(B) *the entity has provided the services to the city, town, or municipality for the immediately preceding 5-year period."*

Approved April 26, 2003

## CHAPTER NO. 527

[SB 399]

AN ACT ALLOWING A MUNICIPALITY OR COUNTY TO REQUEST THAT THE UNITED STATES DEPARTMENT OF TRANSPORTATION ESTABLISH RAILROAD CROSSING QUIET ZONES THROUGH WHICH LOCOMOTIVE HORNS AND BELLS ARE NOT ROUTINELY SOUNDED; REQUIRING THE MUNICIPALITY OR COUNTY TO DESCRIBE HOW REQUIRED SUPPLEMENTAL SAFETY MEASURES WILL BE IMPLEMENTED AT THOSE CROSSINGS; PROVIDING THAT A QUIET ZONE MAY NOT BE ESTABLISHED UNLESS CERTAIN PROCEDURES ARE FOLLOWED; ALLOWING A RAILROAD COMPANY TO PERMIT ITS TRAINS TO PASS THROUGH DESIGNATED QUIET ZONES WITHOUT SOUNDING THEIR HORNS AND BELLS; EXEMPTING A RAILROAD COMPANY AND EMPLOYEES FROM LIABILITY; AMENDING SECTIONS 61-8-347, 69-14-562, AND 69-14-610, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Establishment of railroad quiet zones.** (1) For the purposes of this section, "quiet zone" means a segment of a railroad within which is situated one or a number of consecutive railroad crossings at which locomotive horns and bells are not routinely sounded.

(2) A governing body of a municipality or a board of county commissioners may petition to the secretary of the United States department of transportation to establish quiet zones at railroad crossings that meet the requirements established in the rules adopted to implement 49 U.S.C. 20153(c). In developing the petition, the governing body of the municipality or the board of county commissioners shall consult with the railroad corporations that operate the rail lines through crossings that are within the proposed quiet zone. The petition must include how the municipality or county intends to implement the supplemental safety measures that are required by the United States department of transportation at railroad crossings within quiet zones.

(3) A quiet zone may not be established at a railroad crossing unless the governing body of a municipality or a board of county commissioners follows the

procedure provided in subsection (2) and receives the approval of the secretary of the United States department of transportation or the secretary's designee.

**Section 2.** Section 61-8-347, MCA, is amended to read:

**"61-8-347. Obedience to signal indicating approach of train.** (1) ~~Whenever any~~ *When* a person ~~driving~~ *operating* a vehicle approaches a railroad grade crossing under any of the circumstances stated in this section, the ~~driver~~ *operator* of ~~such~~ *the* vehicle shall stop within 50 feet but not less than 15 feet from the nearest rail of ~~such~~ *the* railroad, and ~~shall~~ *may* not proceed until ~~he~~ *the* operator can do so safely. ~~The foregoing~~ *These requirements shall* apply when:

(a) a clearly visible electric or mechanical signal device gives warning of the ~~presence or~~ *immediate* approach of a railroad train;

(b) a crossing gate is lowered or when a ~~human flagman~~ *flag person* gives or continues to give a signal of the approach or passage of a railroad train;

(c) a railroad train approaching within approximately 1,500 feet of the ~~highway~~ crossing emits a signal audible from ~~such distance and such railroad train, by reason of its speed or nearness to such crossing, is an immediate hazard; that distance, except at crossings within quiet zones established under [section 1], indicating that the train is an immediate hazard because of its speed or nearness to the crossing; or~~

(d) an approaching railroad train is plainly visible and is in hazardous proximity to ~~such~~ *the* crossing.

(2) ~~No person shall drive any~~ *A person may not operate* a vehicle through, around, or under any crossing gate or barrier at a railroad crossing while ~~such~~ *the* gate or barrier is closed or is being opened or closed."

**Section 3.** Section 69-14-562, MCA, is amended to read:

**"69-14-562. Regulation of safety on railroads.** (1) A railroad corporation within this state is guilty of a misdemeanor and upon conviction is subject to the penalties provided in subsection (2) if the corporation:

(a) neglects to provide comfortable and convenient cars or coaches for the transportation of its passengers and their baggage or safe cars for the transportation of express matter and freight;

(b) runs a train over an unsafe bridge, trestlework, or aqueduct;

(c) fails to have a locomotive in use by it equipped with a properly functioning horn and bell;

(d) ~~except as provided in [section 1],~~ *permits* a locomotive to approach a public highway, public road, or public railroad crossing without causing the locomotive horn and bell to be sounded at ~~a point 1,320 feet~~ *the distance* from the crossing ~~provided in 61-8-347,~~ the horn and bell to be sounded from the specified point until the crossing is reached. If the owner or permitholder of a private crossing makes a written request to the railroad corporation to have the locomotive horn and bell sounded at the private crossing, the railroad shall comply with the request. The owner or permitholder is not subject to any liability as a result of not making a request.

(e) willfully fails to make any report required by law.

(2) Upon conviction of the offenses provided in subsection (1), a railroad corporation is subject to a fine of:

(a) \$1,000 for the first offense;



(b) \$2,000 for the second violation of the same provision; and

(c) not less than \$5,000 or more than \$10,000 for subsequent violations of a provision for which it has twice been found guilty.”

**Section 4.** Section 69-14-610, MCA, is amended to read:

**“69-14-610. Effect of railroad crossing provisions on liability of railroad.** (1) Nothing contained in 69-14-601 through 69-14-611 ~~shall in any way affect~~ affects the liability of any a railroad company for damage to persons or property injured at ~~any crossings~~ a railroad crossing.

(2) *A railroad company or an employee of a railroad company may not be held liable for damages to persons or property injured at a railroad crossing that is within a quiet zone, as defined in [section 1], if the damages are alleged to arise from the locomotive’s failure to sound its horn or bell at a railroad crossing that is within a quiet zone as provided in [section 1].”*

**Section 5. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 69, chapter 14, part 6, and the provisions of Title 69, chapter 14, part 6, apply to [section 1].

**Section 6. Effective date.** [This act] is effective on passage and approval.

Approved April 26, 2003

## CHAPTER NO. 528

[SB 464]

AN ACT REVISING LAWS GOVERNING FOOD ESTABLISHMENTS; REVISING FOOD ESTABLISHMENT LICENSURE FEES; PROVIDING FOR LICENSURE OF FOOD ESTABLISHMENTS OPERATED BY THE STATE OR A POLITICAL SUBDIVISION OF THE STATE UNLESS THEY EMPLOY A FULL-TIME SANITARIAN; REQUIRING ANNUAL INSPECTIONS; ALLOWING INSPECTIONS MORE THAN ONCE A YEAR; REQUIRING TRAINING FOR INSPECTORS; AMENDING SECTIONS 50-50-102, 50-50-103, 50-50-202, 50-50-205, AND 50-50-301, MCA; AND PROVIDING DELAYED EFFECTIVE DATES AND A TERMINATION DATE.

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

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

**“50-50-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) “Baked goods” means breads, cakes, candies, cookies, pastries, and pies that are not potentially hazardous foods.

(2) (a) “Commercial establishment” means an establishment operated primarily for profit.

(b) The term does not include a farmer’s market.

(3) “Department” means the department of public health and human services provided for in 2-15-2201.

(4) “Establishment” means a food manufacturing establishment, meat market, food service establishment, food warehouse, frozen food plant, commercial food processor, perishable food dealer, or water hauler not regulated as a public water supply system as provided in Title 75, chapter 6.

(5) "Farmer's market" means a farm premises, a roadside stand owned and operated by a farmer, or an organized market authorized by the appropriate municipal or county authority.

(6) "Food" means an edible substance, beverage, or ingredient used, intended for use, or for sale for human consumption.

(7) (a) "Food manufacturing establishment" means a commercial establishment and buildings or structures in connection with it used to manufacture or prepare food for sale or human consumption, ~~but~~

(b) *The term* does not include milk producers' facilities, milk pasteurization facilities, milk product manufacturing plants, slaughterhouses, or meat packing plants.

(8) (a) "Food service establishment" means a fixed or mobile restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grille, tearoom, sandwich shop, soda fountain, food store serving food or beverage samples, food or drink vending machine, tavern, bar, cocktail lounge, nightclub, industrial feeding establishment, catering kitchen, commissary, private organization routinely serving the public, or similar place where food or drink is prepared, served, or provided to the public with or without charge.

(b) The term does not include establishments, vendors, or vending machines that sell or serve only packaged, nonperishable foods in their unbroken, original containers or a private organization serving food only to its members.

(c) The term does not include an establishment, as defined in 50-51-102, that serves food only to its registered guests.

(9) (a) "Food warehouse" means a commercial establishment and buildings or structures in connection with it used to store food, drugs, or cosmetics for distribution to retail outlets.

(b) The term does not include a wine, beer, or soft drink warehouse that is separate from facilities where brewing occurs.

(10) "Frozen food plant" means a place used to freeze, process, or store food, including facilities used in conjunction with the frozen food plant, and a place where individual compartments are offered to the public on a rental or other basis.

(11) "Meat market" means a commercial establishment and buildings or structures in connection with it used to process, store, or display meat or meat products for sale to the public or for human consumption.

(12) "Nonprofit organization" means any organization qualifying as a tax-exempt organization under 26 U.S.C. 501.

(13) "Perishable food dealer" means a person or commercial establishment that is in the business of purchasing and selling perishable food to the public.

(14) "Person" means a person, partnership, corporation, association, cooperative group, *the state or a political subdivision of the state*, or other entity engaged in operating, owning, or offering services of an establishment.

(15) (a) "Potentially hazardous food" means a food that is natural or synthetic and is in a form capable of supporting:

(i) the rapid and progressive growth of infectious or toxigenic microorganisms; or

(ii) the growth and toxin production of *Clostridium botulinum*.

(b) The term includes cut melons, garlic and oil mixtures, a food of animal origin that is raw or heat-treated, and a food of plant origin that is heat-treated or consists of raw seed sprouts.

(c) The term does not include:

(i) an air-cooled, hard-boiled egg with intact shell;

(ii) a food with a hydrogen ion concentration (pH) level of 4.6 or below when measured at 24 degrees C (75 degrees F);

(iii) a food with a water activity (aw) value of 0.85 or less;

(iv) a food in an unopened hermetically sealed container that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution; or

(v) a food for which laboratory evidence is accepted by the department as demonstrating that rapid and progressive growth of infectious and toxigenic microorganisms or the slower growth of *Clostridium botulinum* cannot occur.

(16) (a) "Preserves" means processed fruit or berry jams, jellies, compotes, fruit butters, marmalades, chutneys, fruit aspics, fruit syrups, or similar products that have a hydrogen ion concentration (pH) of 4.6 or below when measured at 24 degrees C (75 degrees F) and that are aseptically processed, packaged, and sealed.

(b) The term does not include:

(i) tomatoes or food products containing tomatoes; or

(ii) any other food substrate or product preserved by any method other than that described in subsection (16)(a).

(17) "Raw and unprocessed farm products" means fruits, vegetables, and grains sold at a farmer's market in their natural state that are not packaged and labeled and are not:

(a) cooked;

(b) canned;

(c) preserved, except for drying;

(d) combined with other food products; or

(e) peeled, diced, cut, blanched, or otherwise subjected to value-adding procedures.

(18) (a) "Water hauler" means a person engaged in the business of transporting water for human consumption and use and that is not regulated as a public water supply system as provided in Title 75, chapter 6.

(b) The term does not include a person engaged in the business of transporting water for human consumption that is used for individual family households and family farms and ranches."

**Section 2.** Section 50-50-103, MCA, is amended to read:

**"50-50-103. Department authorized to adopt rules — advisory council.** (1) To protect public health, the department may adopt rules relating to the operation of establishments defined in 50-50-102, including coverage of food, personnel, food equipment and utensils, sanitary facilities and controls, construction and fixtures, and housekeeping.

(2) (a) The department and local health authorities may not adopt rules prohibiting the sale of baked goods and preserves by nonprofit organizations or by persons at farmer's markets.

(b) The department and local health authorities may not require that foods sold pursuant to this subsection (2) be prepared in certified or commercial kitchens.

(3) *The department shall use a food safety task force or advisory council to assist in the development of administrative rules or proposed legislation. The task force or advisory council must be composed of equal numbers of representatives of the food establishments and representatives of state and local government. Administrative rules and any legislation to be proposed by the department must be presented to the task force or advisory council prior to its proposal or introduction.*

**Section 3.** Section 50-50-202, MCA, is amended to read:

**"50-50-202. Establishments exempt from license requirement — farmer's market records.** (1) Establishments owned or operated by the state or a political subdivision of the state *that employ a full-time sanitarian* are exempt from licensure but ~~must~~ shall comply with the requirements of this chapter and rules adopted by the department under this chapter.

(2) A license is ~~not~~ not required to operate ~~an~~ an establishment ~~if it is operated by a nonprofit organization for a period of less than 14 days in 1 calendar year if it is operated by a nonprofit organization for a period of less than 14 days in 1 calendar year.~~ An establishment ~~exempt from~~ exempt from licensure under this subsection ~~must~~:

(a) *must* be operated in compliance with the remaining provisions of this chapter and rules adopted by the department under this chapter; and

(b) prior to each operation, *shall* register with the local health officer or sanitarian on forms provided by the department.

(3) (a) A license is not required of a gardener, farm owner, or farm operator who sells raw and unprocessed farm products at a farmer's market.

(b) A license is not required of a person selling baked goods or preserves at a farmer's market.

(4) (a) A farmer's market that is an organized market authorized by a municipal or county authority shall keep registration records of all individuals and organizations that sell baked goods or preserves at the market.

(b) The registration records must include but are not limited to the name of the seller, the seller's address and telephone number, the products sold by the seller, and the date the products were sold.

(c) The registration records must be made available to the local health officer or the officer's agent."

**Section 4.** Section 50-50-205, MCA, is amended to read:

**"50-50-205. License fee — late fee — preemption of local authority — exception.** (1) (a) ~~For~~ Except as provided in subsection (1)(b), for each license issued, the department shall collect a fee of ~~\$60~~ \$75. It shall deposit ~~85%~~ 88% of the fees collected under this section into the local board inspection fund account created in 50-2-108, ~~7.5%~~ 6% of the fees into the general fund, and ~~7.5%~~ 6% of the fees into the account provided for in 50-50-216.

(b) *For each license issued to an establishment that does not have more than two employees working at any one time, the department shall collect a fee of \$60, which must be deposited in accordance with the percentages provided in subsection (1)(a).*

(2) In addition to the license fee required under subsection (1), the department shall collect a late fee 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 an establishment governed by this part in the next licensing year. The late fee is \$25 and 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~~ subsection (1) unless a violation of this chapter or rule persists and is not corrected after two visits to the establishment.

(4) The fees in subsections (1) ~~and (2)~~ 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."

**Section 5.** Section 50-50-205, MCA, is amended to read:

**"50-50-205. License fee — late fee — preemption of local authority — exception.** (1) (a) ~~For~~ *Except as provided in subsection (1)(b), for each license issued, the department shall collect a fee of \$60 \$90. It shall deposit 85% 90% of the fees collected under this section into the local board inspection fund account created in 50-2-108, 7.5% 5% of the fees into the general fund, and 7.5% 5% of the fees into the account provided for in 50-50-216.*

(b) *For each license issued to an establishment that does not have more than two employees working at any one time, the department shall collect a fee of \$60, which must be deposited in accordance with the percentages provided in subsection (1)(a).*

(2) In addition to the license fee required under subsection (1), the department shall collect a late fee 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 an establishment governed by this part in the next licensing year. The late fee is \$25 and 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 visits to the 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."

**Section 6.** Section 50-50-301, MCA, is amended to read:

**"50-50-301. Health officers and sanitarians to make investigations and inspections — training requirements.** (1) State and local health officers, sanitarians-in-training, and registered sanitarians shall make investigations and inspections of establishments *once a year* and make reports

to the department as required under rules adopted by the department. An inspection may be conducted more often than once a year.

(2) A person conducting an inspection must be certified and have completed a food safety training program, such as the program administered by the national restaurant association educational foundation or its equivalent."

**Section 7. Effective dates.** (1) [Sections 1 through 4, 6, and 8 and this section] are effective January 1, 2004.

(2) [Section 5] is effective January 1, 2005.

**Section 8. Termination.** [Section 4] terminates December 31, 2004.

Approved April 26, 2003

## CHAPTER NO. 529

[SB 478]

AN ACT CHANGING THE WAY THAT A POLITICAL SUBDIVISION MAY EXEMPT A PROPERTY TAX MILL LEVY FOR PREMIUM CONTRIBUTIONS FOR GROUP BENEFITS FROM THE PROPERTY TAX LIMITATION LAW; CHANGING THE OPERATIVE DATES; PROVIDING THAT THE HEARING ON THE EXEMPTION MUST COMPLY WITH NOTICE AND HEARING REQUIREMENTS; REQUIRING THAT THE EXEMPT MILL LEVY OR DOLLAR AMOUNT BE LISTED SEPARATELY ON THE PROPERTY TAX NOTICE; AMENDING SECTIONS 2-9-212 AND 2-18-703, 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 2-9-212, MCA, is amended to read:

**"2-9-212. Political subdivision tax levy to pay premiums.** (1) Subject to 15-10-420 and subsection (2) of this section, a political subdivision, except for a school district, may levy an annual property tax in the amount necessary to fund the premium for insurance, deductible reserve fund, and self-insurance reserve fund as authorized in this section and to pay the principal and interest on bonds or notes issued pursuant to 2-9-211(5).

(2) (a) ~~The~~ *If a political subdivision made contributions for group benefits under 2-18-703 on or before July 1, 2001, the increase in a the political subdivision's property tax levy for the political subdivision's premium contributions for group benefits under 2-18-703 beyond the amount of contributions in effect on July 1, 1999, at the beginning of the last fiscal year is not subject to the mill levy calculation limitation provided for in 15-10-420. Levies implemented under this section must be calculated separately from the mill levies calculated under 15-10-420 and are not subject to the inflation factor described in 15-10-420(1)(a). If tax-billing software is capable, the county treasurer shall list separately the cumulative mill levy or dollar amount on the tax notice sent to each taxpayer under 15-16-101(2). The amount must also be reported to the department of administration pursuant to 7-6-4003. The mill levy must be described as the permissive medical levy.*

(b) ~~Prior~~ *Each year prior to implementing a levy under subsection (2)(a), after notice of the hearing given under 7-1-2121 or 7-1-4127, a public hearing must be held regarding any proposed increases.*

(c) *A levy under this section in the previous year may not be included in the amount of property taxes that a governmental entity is authorized to levy for the purposes of determining the amount that the governmental entity may assess under the provisions of 15-10-420(1)(a). When a levy under this section decreases or is no longer levied, the revenue may not be combined with the revenue determined in 15-10-420(1)(a).*"

**Section 2.** 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) For employees defined in 2-18-701 and for members of the legislature, the employer contribution for group benefits is ~~\$295 a month for the period from July 2001 through December 2001, \$325 a month for the period from January 2002 through December 2002, and \$366 a month for January 2003 and for each succeeding month.~~ For employees of the Montana university system, the employer contribution for group benefits is ~~\$325 a month for the period from July 2001 through June 2002 and \$366 a month for the period from July 2002 through June 2003 and for each succeeding month.~~ When 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. 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 and of local government units, the employer's premium contributions may exceed but may not be less than \$10 a month. Subject to the public hearing requirement provided in 2-9-212(2)(b), the increase in a local government's property tax levy for premium contributions for group benefits beyond the amount of contributions in effect on ~~July 1, 1999,~~ *the first day of the last fiscal year* is not subject to the mill levy calculation limitation provided for in 15-10-420.

(4) 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.

(5) 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.

(6) 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 3. Transition.** A levy made prior to [the effective date of this act] under 2-9-212(2) may not be included as a levy in a previous year in determining

the amount of property taxes that a governmental entity may assess under the provisions of 15-10-420(1)(a). If a levy made prior to [the effective date of this act] under 2-9-212(2) decreased or was no longer levied, the difference between that levy and the next year levy may not be carried forward for imposition in a subsequent year under 15-10-420(1)(b).

**Section 4. Coordination instruction.** If House Bill No. 13 is passed and approved, then the amendments contained in 2-18-703(2) in [section 2 of this act] are void.

**Section 5. Effective date.** [This act] is effective on passage and approval.

**Section 6. Retroactive applicability.** [Section 3] applies retroactively, within the meaning of 1-2-109, to levies made after December 31, 1998.

Approved April 26, 2003

## CHAPTER NO. 530

[HB 283]

AN ACT DIRECTING THE ATTORNEY GENERAL TO PREPARE A PROACTIVE OPINION OF STATE OPTIONS REGARDING DELISTING AND POSSIBLE LITIGATION SCENARIOS RELATED TO RECOVERY OF DAMAGES AND COSTS ASSOCIATED WITH WOLF REINTRODUCTION IN MONTANA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Attorney general to analyze state delisting options and possible litigation scenarios for recovery of damages and costs associated with wolf reintroduction.** Pursuant to 2-15-501(9), the attorney general is directed to analyze the state's options related to delisting and, in cooperation with the department of fish, wildlife, and parks, prepare a proactive legal opinion for possible litigation scenarios regarding recovery of damages and costs incurred by the state of Montana that are associated with wolf reintroduction.

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

Approved April 29, 2003

## CHAPTER NO. 531

[HB 722]

AN ACT IMPOSING A UTILIZATION FEE ON RESIDENT BED DAYS OF INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED; AUTHORIZING THE DEPARTMENT OF REVENUE TO COLLECT THE FEE AND DEPOSIT 70 PERCENT OF THE FEE IN A STATE SPECIAL REVENUE FUND TO THE CREDIT OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES FOR THE PURPOSE OF FINANCING, ADMINISTERING, AND PROVIDING HEALTH AND HUMAN SERVICES; PROVIDING FOR THE DEPOSIT OF THE REMAINDER OF THE FEE IN THE STATE GENERAL FUND; PROVIDING AN APPROPRIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.



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

**Section 1. Definitions.** As used in [sections 1 through 13], unless the context requires otherwise, the following definitions apply:

(1) "Calendar quarter" means the period of 3 consecutive months ending March 31, June 30, September 30, or December 31.

(2) "Department" means the department of revenue established in 2-15-1301.

(3) "Intermediate care facility" or "facility" means an intermediate care facility for the mentally retarded [licensed pursuant to section 5 of Senate Bill No. 113].

(4) (a) "Quarterly revenue" means all revenue received during a calendar quarter by a facility operating in Montana for providing for client care.

(b) For facilities operated by the state, the term means total expenditures for the quarter.

(5) "Report" means the report of resident bed days required in [section 3].

(6) "Resident" means an individual obtaining care in an intermediate care facility.

(7) "Resident bed day" means each 24-hour period that a resident in an intermediate care facility is present in the facility and receiving care or in which a bed is held for a resident while the resident is on temporary leave from the facility. The term includes all benefit days as defined for medicare reporting purposes in section 242.1 of Publication 12, the Skilled Nursing Facility Manual, published by the centers for medicare and medicaid services, regardless of the source of payment.

(8) "Utilization fee" or "fee" means the fee required to be paid for each resident bed day in an intermediate care facility, as provided in [section 2].

**Section 2. Utilization fee for resident bed days.** (1) Each calendar quarter, an intermediate care facility shall pay to the department a utilization fee for each resident bed day calculated as provided in subsection (2).

(2) The utilization fee is 5% of the intermediate care facility's quarterly revenue divided by the resident bed days for the quarter.

(3) In accordance with the provisions of 15-1-501, all proceeds of the utilization fee, including penalty and interest, must be deposited as follows:

(a) 30% in the state general fund; and

(b) 70% in an account in the state special revenue fund established pursuant to [section 14] to the credit of the department of public health and human services to finance, administer, and provide health and human services.

**Section 3. Reporting, collection, and deposit of fee.** (1) An intermediate care facility shall report to the department, following the end of each calendar quarter, the facility's quarterly revenue and the number of resident bed days in the facility during the quarter. The report, in a form prescribed by the department, is due on or before the last day of the month following the close of each calendar quarter. The report must be accompanied by a payment in an amount equal to the utilization fee required to be paid under [section 2]. The department shall deposit the utilization fee pursuant to [section 2(3)].

(2) At the end of each calendar quarter, the department of public health and human services shall provide the department with a list of intermediate care facilities.

**Section 4. Audit — records.** (1) The department may audit the records and other documents of any intermediate care facility to ensure that the proper utilization fee has been paid.

(2) The department may require an intermediate care facility to provide records and other documentation, including books, ledgers, and registers, necessary for the department to verify that the proper amount of the utilization fee has been paid.

(3) An intermediate care facility shall maintain and make available for inspection by the department sufficient records and other documentation to demonstrate the number of resident bed days in the facility. The facility shall maintain these records for a period of at least 5 years from the date a report is due.

**Section 5. Statute of limitations.** (1) Except as otherwise provided in this section, a deficiency may not be assessed or collected with respect to the quarter for which a report is filed unless the notice of additional utilization fee proposed to be assessed is mailed within 5 years from the date the report was filed. For the purposes of this section, a report filed before the last day prescribed for filing is considered filed on the last day. If, before the expiration of the period prescribed for assessment of the utilization fee, the intermediate care facility consents in writing to an assessment after the 5-year period, the utilization fee may be assessed at any time prior to the expiration of the period agreed upon.

(2) A refund or credit may not be paid or allowed with respect to the calendar quarter for which a report is filed after 5 years from the last day prescribed for filing the report or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period the intermediate care facility files a claim or the department has determined the existence of the overpayment and has approved the refund or credit. If the intermediate care facility 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 is filed or a credit or refund is allowed in the event a claim is filed is automatically extended.

**Section 6. Penalty and interest for delinquent fee.** If the fee for any intermediate care facility is not paid on or before the due date of the report as provided in [section 3], penalty and interest, as provided in 15-1-216, must be added to the fee.

**Section 7. Estimated fee on failure to file.** (1) For the purpose of ascertaining the correctness of any report or for the purpose of making an estimate of resident bed day use of any intermediate care facility about which information has been obtained, the department may:

(a) examine or cause to have examined by any designated agent or representative any books, papers, records, or memoranda bearing upon the matters required to be included in the report;

(b) require the attendance of any officer or employee of the facility rendering the report or the attendance of any other person in the premises having relevant knowledge; and

(c) take testimony and require production of any other material for its information.

(2) Based on the information provided for in subsection (1), the department shall calculate a fee to be imposed on a facility and shall notify the facility of the amount of the fee pursuant to [section 8].

**Section 8. Deficiency assessment.** (1) If the department determines that the amount of fees due is greater than the amount disclosed by the report, it shall mail to the intermediate care facility a notice of the additional fees proposed to be assessed. Within 30 days after the mailing of the notice, the intermediate care facility may file with the department a written protest against the proposed additional fees, setting forth the grounds upon which the protest is based, and may request in its protest an oral hearing or an opportunity to present additional evidence relating to its fee liability. If a protest is not filed, the amount of the additional fees proposed to be assessed becomes final upon the expiration of the 30-day period. If a protest is filed, the department shall reconsider the proposed assessment and, if the intermediate care facility has requested it, shall grant the intermediate care facility an oral hearing. After consideration of the protest and the evidence presented at an oral hearing, the department's action upon the protest is final when it mails notice of its action to the intermediate care facility.

(2) When a deficiency is determined and the fees become final, the department shall mail notice and demand to the intermediate care facility and the fees become due and payable at the expiration of 10 days from the date of the notice and demand. Interest on any deficiency assessment accrues from the date specified in [section 3] for payment of the fees. A certificate by the department of the mailing of the notices specified in this section is prima facie evidence of the computation and levy of the deficiency in the fees and of the giving of the notices.

**Section 9. Closing agreements.** (1) The director of the department or any person authorized in writing by the director may enter into an agreement with any intermediate care facility relating to the liability of the intermediate care facility with respect to the fees imposed by [sections 1 through 13] for any period.

(2) An agreement under this section is final and conclusive, and except upon a showing of fraud, malfeasance, or misrepresentation of a material fact:

(a) the agreement may not be reopened or modified as to matters agreed upon by any officer, employee, or agent of this state; and

(b) 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 10. Credit for overpayment — interest.** (1) If the department determines that the amount of fees, penalty, or interest due for any year is less than the amount paid, the amount of the overpayment must be credited against any fees, penalty, or interest then due from the intermediate care facility and the balance must be refunded to the intermediate care facility or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) Except as provided in subsection (3), interest is allowed on overpayments at the same rate as is charged on unpaid taxes, as provided in 15-1-216, from the due date of the report or from the date of overpayment, whichever date is later, to the date the department approves refunding or crediting of the overpayment. Interest does not accrue during any period in which the processing of a claim for refund is delayed more than 30 days by reason of failure of the intermediate care

facility to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(3) Interest is not allowed:

(a) if the overpayment is refunded within 6 months from the date the report is due or from the date the return is filed, whichever is later; or

(b) if the amount of interest is less than \$5.

(4) A payment not made incident to a discharge of actual utilization fee liability or a payment reasonably assumed to be imposed by [sections 1 through 13] is not considered an overpayment with respect to which interest is allowable.

**Section 11. Warrant for distraint.** If the utilization fee is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7.

**Section 12. Relation to other taxes and fees.** The utilization fee imposed under [section 2] is in addition to any other taxes and fees required by law to be paid by an intermediate care facility.

**Section 13. Rulemaking authority.** The department may adopt rules necessary to implement and administer [sections 1 through 13].

**Section 14. State special revenue account.** There is a prevention and stabilization account in the state special revenue fund provided for in 17-2-102. Money in the account must be used by the department of public health and human service to finance, administer, and provide health and human services.

**Section 15. Appropriation.** The following money is appropriated to the department of public health and human services:

(1) from the general fund for the payment of the utilization fees created in [section 2]:

Fiscal year 2003	\$426,018
Fiscal year 2004	\$917,585
Fiscal year 2005	\$922,466

(2) from the state special revenue account in [section 14] for the purposes of financing, administering, and providing health and human services:

Fiscal year 2003	\$298,213
Fiscal year 2004	\$642,039
Fiscal year 2005	\$645,726

(3) from federal special revenue for the purposes of financing, administering, and providing health and human services:

Fiscal year 2003	\$1,114,118
Fiscal year 2004	\$2,364,548
Fiscal year 2005	\$2,394,823

**Section 16. Codification instruction.** (1) [Sections 1 through 13] are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 1 through 13].

(2) [Section 14] is intended to be codified as an integral part of Title 53, chapter 6, and the provisions of Title 53, chapter 6, apply to [section 14].

**Section 17. Contingent voidness.** (1) If federal law or policy is amended so that the utilization fees collected pursuant to [sections 1 through 13] may not be considered as the state's share in claiming federal financial participation under the medicaid program, then [this act] is void as of the effective date of the change in federal law or policy.

(2) If the federal government refuses to participate in or denies approval of any plan for medicaid payments to intermediate care facilities on grounds that it considers the payments to be reimbursement to facilities for payment of the utilization fees, then [this act] is void as of the date of receipt by the department of public health and human services of notice of an official determination of the refusal or denial.

(3) If [this act] becomes void under the provisions of this section, all fees due or received or collected by the department of revenue prior to the date upon which the act becomes void must be paid and deposited in accordance with [section 2] and a person or party may not receive a refund of any fees received or collected by the department of revenue prior to the date upon which [this act] becomes void.

(4) The department of revenue or the department of public health and human services, as appropriate, shall notify the code commissioner of the occurrence of any of the contingencies provided for in subsections (1) through (3) and the effective date of the contingency.

**Section 18. Coordination instruction.** (1) If Senate Bill No. 113 is passed and approved, then the code commissioner shall change the reference to "immediate care facility for the mentally retarded" in [this act] to "immediate care facility for the developmentally disabled".

(2) If Senate Bill No. 113 is not passed and approved, then the bracketed language in [this act] is void.

(3) If House Bill No. 727 is passed and approved, [section 15 of this act] is void and the following money is appropriated to the department of public health and human services:

(a) from the general fund for the payment of the utilization fees created in [section 2]:

Fiscal year 2003	\$426,018
Fiscal year 2004	\$833,971
Fiscal year 2005	\$798,486

(b) from the state special revenue account in [section 14 of this act] for the purposes of financing, administering, and providing health and human services:

Fiscal year 2003	\$298,213
Fiscal year 2004	\$583,780
Fiscal year 2005	\$558,940

(c) from federal special revenue for the purposes of financing, administering, and providing health and human services:

Fiscal year 2003	\$1,114,118
Fiscal year 2004	\$2,176,598
Fiscal year 2005	\$2,046,753

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

**Section 21. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2002.

Approved April 29, 2003

## CHAPTER NO. 532

[HB 743]

AN ACT INCLUDING BED DAYS AT THE MONTANA MENTAL HEALTH NURSING CARE CENTER IN THE NURSING FACILITY UTILIZATION FEE; PROVIDING FOR THE DISPOSITION OF UTILIZATION FEES FROM THE MONTANA MENTAL HEALTH NURSING CARE CENTER; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 15-60-101 AND 15-60-210, MCA; AND PROVIDING AN EFFECTIVE DATE AND A CONTINGENT VOIDNESS PROVISION.

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

**Section 1.** Section 15-60-101, MCA, is amended to read:

**“15-60-101. (Temporary) Definitions.** For purposes of this chapter, unless the context requires otherwise, the following definitions apply:

(1) (a) “Bed day” means each 24-hour period that a resident of a nursing facility is present in the facility and receiving skilled nursing care or intermediate nursing care or in which a bed is held for a resident while the resident is on temporary leave from the facility.

(b) The term includes all periods of 24 hours described in subsection (1)(a), regardless of the source of payment. The term also includes the day of a resident’s admission to a nursing facility and the day of the resident’s death, even though the resident is present for less than a 24-hour period on these days.

(2) “Calendar quarter” means the period of 3 consecutive months ending March 31, June 30, September 30, or December 31.

(3) “Department” means the department of revenue.

(4) “Nursing facility” or “facility” means a health care facility licensed by the department of public health and human services as a nursing facility to provide skilled nursing care or intermediate nursing care. The term includes:

(a) nursing facilities, whether they are:

~~(a)~~(i) operated as nonprofit or for-profit facilities;

~~(b)~~(ii) freestanding or part of another health care facility; or

~~(c)~~(iii) publicly or privately operated; and

(b) the Montana mental health nursing care center provided for in 53-21-411.

(5) “Report” means the report of bed days required in 15-60-201.

(6) “Skilled nursing care” and “intermediate nursing care” have the same meaning as those terms are defined in 50-5-101.

(7) "Utilization fee" or "fee" means the fee required to be paid for each bed day in a nursing facility, as provided in 15-60-102. (Void on occurrence of contingency—sec. 18, Ch. 746, L. 1991—see chapter compiler's comment.)"

**Section 2.** Section 15-60-210, MCA, is amended to read:

**"15-60-210. (Temporary) Disposition of fee.** (1) ~~All~~ Except as provided in subsection (2), all proceeds from the collection of utilization fees, including penalties and interest, must, in accordance with the provisions of 15-1-501, be deposited in the general fund.

(2) Utilization fees, including penalties and interest, collected from the Montana mental health nursing care center must be allocated as follows:

(a) 30% to the state general fund; and

(b) 70% to the prevention and stabilization account in the state special revenue fund established pursuant to [section 14 of House Bill No. 722] to the credit of the department of public health and human services to finance, administer, and provide health and human services. (Void on occurrence of contingency—sec. 18, Ch. 746, L. 1991—see chapter compiler's comment.)"

**Section 3. Appropriation.** The following money is appropriated to the department of public health and human services:

(1) from the general fund for the payment of the utilization fees provided for in 15-60-102:

Fiscal year 2004	\$71,540
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Fiscal year 2005	71,540
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(2) from the state special revenue account in [section 14 of House Bill No. 722] for the purposes of financing, administering, and providing health and human services:

Fiscal year 2004	\$ 50,078
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Fiscal year 2005	50,078
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(3) from federal special revenue for the purposes of financing, administering, and providing health and human services:

Fiscal year 2004	\$186,713
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Fiscal year 2005	183,377
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**Section 4. Contingent appropriation.** If House Bill No. 705 is passed and approved, [section 3 of this act] is void and the following money is appropriated to the department of public health and human services:

(1) from the general fund for the payment of the utilization fees provided for in 15-60-102:

Fiscal year 2004	\$114,975
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Fiscal year 2005	135,415
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(2) from the state special revenue account in [section 14 of House Bill No. 722] for the purposes of financing, administering, and providing health and human services:

Fiscal year 2004	\$80,483
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Fiscal year 2005	94,791
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(3) from federal special revenue for the purposes of financing, administering, and providing health and human services:

Fiscal year 2004

\$300,076

Fiscal year 2005

347,108

**Section 5. Coordination.** If House Bill No. 722 is not passed and approved, then [sections 2 through 4 of this act] are void.

**Section 6. Contingent voidness.** If any of the contingencies contained in section 18, Chapter 746, Laws of 1991, occur, then [this act] is void.

**Section 7. Effective date.** [This act] is effective July 1, 2003.

Approved April 29, 2003

## CHAPTER NO. 533

[HB 767]

AN ACT GENERALLY REVISING MOTOR VEHICLE AND DRIVING RECORD LAWS; PROVIDING FOR SPECIAL MOTORCYCLE LICENSE PLATES; ESTABLISHING A FEE FOR THE SPECIAL MOTORCYCLE LICENSE PLATES AND REQUIRING THAT THE PROCEEDS BE USED FOR GRANTS TO NONPROFIT ORGANIZATIONS IDENTIFIED IN RULES ADOPTED BY THE DEPARTMENT OF JUSTICE; STATUTORILY APPROPRIATING THE FEE PROCEEDS TO THE DEPARTMENT OF JUSTICE; REVISING LAWS GOVERNING THE RELEASE OF INFORMATION FROM DRIVING RECORDS BY THE DEPARTMENT OF JUSTICE, THE KIND OF INFORMATION THAT MAY BE RELEASED, AND THE FEES THAT MAY BE CHARGED; AMENDING SECTIONS 17-7-502, 61-11-105, 61-11-503, 61-11-509, AND 61-11-510, MCA; AND PROVIDING EFFECTIVE DATES.

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

**Section 1. Special motorcycle license plates — department to design — fees — distribution.** (1) A Montana resident who is the owner of a motorcycle or quadricycle titled and registered under this chapter and who pays the fee required under subsection (2) may be issued a set of special motorcycle license plates bearing a design created by the department. The design must recognize the efforts of one or more Montana-based nonprofit organizations that grant wishes to chronically or critically ill Montana children.

(2) A person requesting a set of special motorcycle license plates under this section shall pay to the county treasurer:

(a) an administrative fee of \$5 upon initial issuance of the special license plates; and

(b) an annual donation fee of \$20 upon initial issuance, renewal, or transfer of the special license plates.

(3) The county treasurer shall remit the fees required in subsection (2) to the department of revenue. For each set of plates issued, the department of revenue shall deposit \$5 in the state general fund and \$20 in an account in the state special revenue fund to be used by the department as provided in subsection (4).

(4) The department shall use the money deposited in the account in the state special revenue fund as provided in subsection (3) to provide grants, using criteria established by the department, to Montana-based nonprofit



organizations that grant wishes to Montana children who are chronically or critically ill.

(5) The department shall adopt rules to identify the entity or entities that may qualify for grants under this section and to establish the criteria that an entity must meet to receive grant funds.

(6) The account in the state special revenue fund provided for in subsection (3) is statutorily appropriated to the department, as provided in 17-7-502.

**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: 2-15-151; 2-17-105; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-324; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-6-703; 53-24-206; [section 1]; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; 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 Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, the inclusion of 15-35-108 and 90-6-710 terminates June 30, 2005; pursuant to sec. 17, Ch. 414, L. 2001, the inclusion of 2-15-151 terminates December 31, 2006; and pursuant to sec. 2, Ch. 594, L. 2001, the inclusion of 17-3-241 becomes effective July 1, 2003.)”

**Section 3.** Section 61-11-105, MCA, is amended to read:

**“61-11-105. Release of information — fees.** (1) Subject to the ~~provisions of subsection (2)~~ *limitations of this section*, the department shall, upon request, furnish a person the individual Montana driving record of a *driver or licensee, showing* containing the following data:

(a) *the driver’s or licensee’s name, driver’s license number, and date of birth;*

(b) *driver’s license status, including the license type and any endorsements, the license issue date, license restrictions, any suspensions, revocations, or cancellations that have been imposed against the driver or licensee, and the license expiration date;*

~~(b)~~(c) *convictions of the driver or licensee; and*

~~(c)~~(d) *traffic accidents in which the driver or licensee was involved.*

(2) *The department may not enter into any agreement to disclose or sell, in bulk, any data contained in an individual Montana driving record unless the requester of the information provides the department with the names, driver’s license numbers, and dates of birth of the drivers or licensees from whose records a change in license status or conviction activity is to be reported.*

(3) *The department may not disclose personal information or highly restricted personal information from an individual Montana driving record, except as permitted or required under 61-11-507, 61-11-508, or 61-11-509.*

~~(3)~~(4) *Information relating to a traffic accident that did not involve a conviction, as defined in 61-11-203, may not be released by the department unless the release is requested or approved by a party involved in the accident or is required by court order or a duly executed subpoena.*

~~(4)~~(5) (a) *Subject to the requirements of subsection (6) and except as provided in subsection (5)(b), a fee of \$4 must be paid for each individual Montana driving record requested. A fee of \$10 must be paid if a certified Montana record, as provided in 61-11-102(6), is requested. A fee of eight cents must be paid for each individual Montana driving record that is searched by the department to report to a requester a change in license status or conviction activity from one or more individual Montana driving records.*

(b) ~~All driving records~~ *An individual Montana driving record must be provided without charge to any criminal justice agency, as defined in 44-5-103, or other state or federal agency.*

(6) *In addition to the fees required in subsection (5) and 61-11-510(3), an individual Montana driving record or any report compiled from one or more individual Montana driving records that are electronically transmitted to a requester through a point of entry for electronic government services are subject to the convenience fee established under 2-17-1103.*

(7) *The department may require a requester, other than a federal, state, or local government agency, seeking one or more individual Montana driving records or any data otherwise contained in one or more individual Montana driving records in electronic format to use a point of entry for electronic government services to obtain the record or data.”*

**Section 4.** Section 61-11-503, MCA, is amended to read:

**“61-11-503. Definitions.** As used in this part, the following definitions apply:

(1) “Disclose” means to engage in any practice or conduct that makes available or known, by means of any communication to another person,

organization, or entity, personal information contained in a motor vehicle record.

(2) "Express consent" means an affirmative authorization given in writing by a person to whom personal information pertains that specifically allows the department to release personal information to another person, organization, or entity. Consent may be conveyed electronically if the conveyance includes an electronic signature, as defined in 2-20-103, from the person to whom the personal information pertains.

(3) "Highly restricted personal information" means an individual's photograph or image, social security number, or medical or disability information.

(4) "Motor vehicle record" means any record maintained by the department that pertains to a driver's license, commercial driver's license, driving permit, motor vehicle title, motor vehicle registration, or identification card issued by the department.

(5) "Person" does not mean a state agency or local government entity.

(6) (a) "Personal information" means information that identifies a person, including a person's name, address, telephone number, social security number, ~~driver~~ driver's license or identification number, date of birth, photograph or image, and medical or disability information.

(b) The term does not include the five-digit zip code of an address, information on vehicular accidents, driving or equipment-related violations, a person's driver's license or vehicle registration status, or a vehicle's insurance status.

(7) "Record" includes all books, papers, photographs, photostats, cards, film, tapes, recordings, electronic data, printouts, or other documentary materials, regardless of physical form or characteristics."

**Section 5.** Section 61-11-509, MCA, is amended to read:

**"61-11-509. Permitted disclosure of personal information, excluding highly restricted personal information — specific uses.** Upon application, proof of the identity of the person requesting a record, and payment of the fees required in 61-11-510 and subject to the provisions of 61-11-105, the department may disclose personal information, excluding highly restricted personal information, from a motor vehicle record to a person who represents that the use of the personal information will be limited to one or more of the following uses:

(1) in the normal course of business by a legitimate business or its agents, employees, or contractors, but only:

(a) to verify the accuracy of personal information submitted by the individual to the business or its agents, employees, or contractors; and

(b) if the submitted information is not correct or is no longer correct, to obtain the correct information for the purposes of preventing fraud by pursuing legal remedies against or recovering on a debt or security interest against the individual;

(2) by a party in interest, or the agent of a party in interest, in a civil, criminal, administrative, or arbitral proceeding in any court or government agency or before any self-regulatory body, including the service of process, an

investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of any court;

(3) by an insurer or insurance support organization or a self-insured entity or its agents, employees, or contractors, in connection with the following arising under insurance policies:

- (a) the investigation of claims;
- (b) antifraud activities;
- (c) ratemaking; or
- (d) underwriting;

(4) by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license required under federal or state law;

(5) to conduct research activities and produce statistical reports and journalistic articles as long as the personal information is not published, disclosed to a third party, or used to contact individuals;

(6) to provide notice to the owners of towed, abandoned, or impounded vehicles;

(7) for use by any licensed private investigative agency or licensed security service for any purpose provided under this section;

(8) for use in activities pertaining to:

- (a) motor vehicle or driver safety and theft;
- (b) motor vehicle emissions;
- (c) motor vehicle product alterations, recalls, or advisories;

(d) performance monitoring of motor vehicles and dealers by motor vehicle manufacturers; and

(e) removal of nonowner records from the original owner records of motor vehicle manufacturers;

(9) for any other use that is specifically related to the operation of a motor vehicle or to public safety and that is authorized by state law; and

(10) for any use by a requester who demonstrates to the department that the requester has obtained the express consent of the person to whom the information pertains."

**Section 6.** Section 61-11-510, MCA, is amended to read:

**"61-11-510. Prerequisites to disclosure.** (1) Prior to the disclosure of personal information or highly restricted personal information, as provided in 61-11-507, 61-11-508, or 61-11-509, the department shall require the requester to complete and submit an application, in a form prescribed by the department, identifying the requester and specifying the statutorily recognized uses for which the personal information or highly restricted personal information is being sought.

(2) The department shall require the requester to provide identification acceptable to the department.

(3) (a) The department shall collect the appropriate fees paid by the requester and shall determine the amount of the fees in accordance with 61-3-101, 61-11-105, and this subsection (3), ~~or~~ and as appropriate, in

accordance with the terms of a contract between the department and the requester.

(b) The department shall ensure that fees established by policy or contract:

(i) recover the department's cost and expenses as provided in 2-6-110(2) and 61-3-101; ~~and~~

(ii) include an additional amount necessary to compensate the department for costs associated with developing and maintaining the database from which information is requested; *and*

(iii) *incorporate, when applicable, the convenience fee established under 2-17-1103.*

(c) Except as provided in 61-11-105(5)(b) subsection (3)(d) of this section, the department shall charge a fee to any person, including a representative of a federal, state, or local government entity or member of the news media who requests information under this section.

(d) The department may not charge a fee for information requested by the governor's office of budget and program planning, the state tax appeal board, any legislative branch agency or committee, or any criminal justice agency, as defined in 44-5-103."

**Section 7. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 61, chapter 3, part 4, and the provisions of Title 61, chapter 3, part 4, apply to [section 1].

**Section 8. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective July 1, 2003.

(2) [Section 1] is effective January 1, 2004.

Approved April 29, 2003

## CHAPTER NO. 534

[SB 112]

AN ACT ASSISTING IN THE FUNDING OF MONTANA SEARCH AND RESCUE OPERATIONS; ASSESSING A SURCHARGE ON CERTAIN LICENSES AND DIRECTING THAT SURCHARGE PROCEEDS BE SPENT FOR COUNTY SEARCH AND RESCUE OPERATIONS AND TRAINING AND AS MATCHING FUNDS FOR THE PURCHASE OF EQUIPMENT BY LOCAL SEARCH AND RESCUE UNITS; CREATING A SEARCH AND RESCUE ACCOUNT, TO BE ADMINISTERED BY THE DISASTER AND EMERGENCY SERVICES DIVISION OF THE DEPARTMENT OF MILITARY AFFAIRS, TO ASSIST IN FUNDING SEARCH AND RESCUE OPERATIONS; AMENDING SECTIONS 15-1-122, 23-2-517, 23-2-615, 23-2-616, 23-2-803, 87-1-601, AND 87-2-202, MCA; AND PROVIDING DELAYED EFFECTIVE DATES.

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

**Section 1. Account created for funding search and rescue operations — rules.** (1) There is an account in the state special revenue fund established in 17-2-102. The account must be administered by the disaster and emergency services division of the department exclusively for the purposes of

search and rescue as provided in this section. The department may retain up to 5% of the money in the account to pay its costs of administering this section.

(2) There must be deposited in the account:

(a) fund transfers pursuant to 15-1-122(3)(g);

(b) fund transfers pursuant to 87-1-601(9). These funds may be used only as provided in 87-1-601(9).

(c) all money received by the department in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used for search and rescue operations.

(3) (a) Not less than 50% of the money in the account must be used by the department to defray costs of search and rescue missions conducted by a county sheriff's office at a maximum of \$3,000 for each rescue mission, regardless of the number of counties or county search and rescue organizations involved.

(b) The remaining money in the account may be used by the department:

(i) to match local funds for the purchase of equipment for use by local search and rescue units at a maximum of \$2,000 for each unit in a calendar year. The cost-sharing match must be 35% local funds to 65% from the account.

(ii) for reimbursement of expenses related to the training of search and rescue volunteers.

(4) The department may adopt rules to implement the proper administration of the account. The rules may include:

(a) a method of reimbursing county sheriff offices, on a case-by-case basis, for authorized search and rescue operations conducted pursuant to subsection (3)(a), including verification of search missions, claims procedures, fiscal accountability, and the number and circumstances of search missions involving persons engaged in hunting, fishing, and trapping in a fiscal year;

(b) methods for processing requests for equipment matching funds and training funds made pursuant to subsection (3)(b), including any verification and accounting necessary to ensure that the provisions of subsection (3)(b) are met, and determining the percentage of all search missions involving persons engaged in hunting, fishing, or trapping in a fiscal year; and

(c) a system involving input from representatives of county sheriff organizations and state and local search and rescue organizations for assistance in verifying and processing claims for reimbursement, equipment, and training.

**Section 2.** Section 15-1-122, MCA, is amended to read:

**"15-1-122. Fund transfers.** (1) There is transferred from the state general fund to the adoption services account, provided for in 42-2-105, \$36,764 for fiscal year 2003. Beginning with fiscal year 2004, the amount of the transfer must be increased by 10% in each succeeding fiscal year.

(2) There is transferred from the state general fund to the department of transportation state special revenue nonrestricted account the following amounts:

(a) \$75,000 in fiscal year 2003;

(b) \$2,960,715 in fiscal year 2004; and

(c) in each succeeding fiscal year, the amount in subsection (2)(b), increased by 1.5% in each succeeding fiscal year.

(3) For fiscal year 2002 and for each succeeding fiscal year, there is transferred from the state general fund to the accounts, entities, or recipients indicated the following amounts:

(a) to the motor vehicle recycling and disposal program provided for in Title 75, chapter 10, part 5:

(i) \$2 for each new application for a motor vehicle title and for each transfer of a motor vehicle title for which a fee is paid pursuant to 61-3-203; and

(ii) \$1 for each passenger car or truck under 8,001 pounds GVW registered for licensing pursuant to Title 61, chapter 3, part 3. Fifteen cents of each dollar must be used for the purpose of reimbursing the hired removal of abandoned vehicles during the calendar year following the calendar year in which the fee was paid. Any portion of the 15 cents not used for abandoned vehicle removal reimbursement during the calendar year following its payment must be used as provided in 75-10-532;

(b) to the noxious weed state special revenue account provided for in 80-7-816:

(i) \$1 for each off-highway vehicle subject to payment of the fee in lieu of tax, as provided for in 23-2-803; and

(ii) \$1.50 for each light vehicle, truck or bus weighing less than 1 ton, logging truck, vehicles weighing more than 1 ton, motorcycle, quadricycle, and motor home subject to registration or reregistration pursuant to 61-3-321;

(c) to the department of fish, wildlife, and parks:

(i) \$2.50 for each motorboat, sailboat, or personal watercraft receiving a certificate of number under 23-2-512, with 20% of the amount received to be used to acquire and maintain pumpout equipment and other boat facilities;

(ii) \$5 for each snowmobile registered under 23-2-616, with \$2.50 to be used for enforcing the purposes of 23-2-601 through 23-2-644 and \$2.50 designated for use in the development, maintenance, and operation of snowmobile facilities;

(iii) \$1 for each duplicate snowmobile decal issued under 23-2-617;

(iv) \$5 for each off-highway vehicle decal issued under 23-2-804 and each off-highway vehicle duplicate decal issued under 23-2-809, with 40% of the money used to enforce the provisions of 23-2-804 and 60% of the money used to develop and implement a comprehensive program and to plan appropriate off-highway vehicle recreational use;

(v) to the state special revenue fund established in 23-1-105, \$3.50 for each recreational vehicle, camper, motor home, and travel trailer registered or reregistered and subject to the fee in 61-3-321 or 61-3-524; and

(vi) an amount equal to 20% of the funds collected pursuant to 23-2-518 to be deposited in the motorboat account to be used as provided in 23-2-533;

(d) to the state veterans' cemetery account, provided for in 10-2-603, \$10 for each veteran's license plate issued pursuant to 61-3-332(10)(a)(ii), (10)(f), and (10)(h);

(e) to the supplemental benefits for highway patrol officers' retirement account provided for in 19-6-709, 25 cents for each motor vehicle registered, other than trailers or semitrailers registered in other jurisdictions and registered through a proportional registration agreement; ~~and~~

(f) 25 cents a year for each vehicle subject to the fee in 61-3-321(6) for deposit in the state special revenue fund to the credit of the senior citizens and persons with disabilities transportation services account provided for in 7-14-112; and

(g) to the search and rescue account provided for in [section 1];

(i) 50 cents a year for each vessel subject to the search and rescue surcharge in 23-2-517;

(ii) 50 cents a year for each snowmobile subject to the search and rescue surcharge in 23-2-615(1)(b) and 23-2-616(3); and

(iii) 50 cents a year for each off-highway vehicle subject to the search and rescue surcharge in 23-2-803.

~~(4) For fiscal year 2002, there is transferred from the state general fund to the state special revenue fund to be used for purposes of state funding of district court expenses, as provided in 3-5-901, \$5,742,983 in lieu of the amount deposited by the state treasurer under 61-3-509(3), as that subsection read prior to the amendment of 61-3-509 in 2001.~~

~~(5)(4) For each fiscal year, beginning with fiscal year 2002, the department of justice shall provide to the department of revenue a count of the vehicles required for the calculations in subsection (3). Transfer amounts for fiscal year 2002 must be based on vehicle counts for calendar year 2000. Transfer amounts in each succeeding fiscal year must be based on vehicle counts in the most recent calendar year for which vehicle information is available.~~

~~(6)(5) The amounts transferred from the general fund to the designated recipient must be appropriated as state special revenue in the general appropriations act for the designated purposes."~~

**Section 3.** Section 23-2-517, MCA, is amended to read:

**"23-2-517. Fees for motorboats, sailboats, personal watercraft, motorized canoes, motorized rubber rafts, and motorized pontoons.** (1) The owner of a motorboat 10 feet in length or longer or a sailboat 12 feet in length or longer shall pay a fee based on the length and age of the motorboat or sailboat as follows:

(a) The fee schedule for a motorboat at least 10 feet in length but less than 14 feet in length or sailboat at least 12 feet in length but less than 14 feet in length is as follows:

(i) for a motorboat or sailboat less than 5 years of age, ~~\$7.50~~ \$8, of which 50 cents is a search and rescue surcharge;

(ii) for a motorboat or sailboat 5 years of age or older but less than 10 years of age, ~~\$5.65~~ \$6.15, of which 50 cents is a search and rescue surcharge; and

(iii) for a motorboat or sailboat 10 years of age or older, ~~\$3.75~~ \$4.25, of which 50 cents is a search and rescue surcharge.

(b) The fee schedule for a motorboat or sailboat at least 14 feet in length but less than 16 feet in length is as follows:

(i) for a motorboat or sailboat less than 5 years of age, ~~\$15~~ \$15.50, of which 50 cents is a search and rescue surcharge;

(ii) for a motorboat or sailboat 5 years of age or older but less than 10 years of age, ~~\$11.25~~ \$11.75, of which 50 cents is a search and rescue surcharge; and

(iii) for a motorboat or sailboat 10 years of age or older, ~~\$7.50~~ \$8, of which 50 cents is a search and rescue surcharge.



(c) The fee schedule for a motorboat or sailboat at least 16 feet in length but less than 17 feet in length is as follows:

(i) for a motorboat or sailboat less than 5 years of age, ~~\$32~~ \$32.50, of which 50 cents is a search and rescue surcharge;

(ii) for a motorboat or sailboat 5 years of age or older but less than 10 years of age, ~~\$24~~ \$24.50, of which 50 cents is a search and rescue surcharge; and

(iii) for a motorboat or sailboat 10 years of age or older, ~~\$16~~ \$16.50, of which 50 cents is a search and rescue surcharge.

(d) The fee schedule for a motorboat or sailboat at least 17 feet in length but less than 19 feet in length is as follows:

(i) for a motorboat or sailboat less than 5 years of age, \$3 a foot or fraction of a foot, plus an additional 50-cent search and rescue surcharge added to the total fee;

(ii) for a motorboat or sailboat 5 years of age or older but less than 10 years of age, \$2.25 a foot or fraction of a foot, plus an additional 50-cent search and rescue surcharge added to the total fee; and

(iii) for a motorboat or sailboat 10 years of age or older, \$1.50 a foot or fraction of a foot, plus an additional 50-cent search and rescue surcharge added to the total fee.

(e) The fee schedule for a motorboat or sailboat 19 feet in length or longer is as follows:

(i) for a motorboat or sailboat less than 5 years of age, \$4 a foot or fraction of a foot, plus an additional 50-cent search and rescue surcharge added to the total fee;

(ii) for a motorboat or sailboat 5 years of age or older but less than 10 years of age, \$3 a foot or fraction of a foot, plus an additional 50-cent search and rescue surcharge added to the total fee; and

(iii) for a motorboat or sailboat 10 years of age or older, \$2 a foot or fraction of a foot, plus an additional 50-cent search and rescue surcharge added to the total fee.

(2) The owner of a personal watercraft shall pay a fee based on the age of the watercraft as follows:

(a) The fee for a personal watercraft less than 4 years of age is ~~\$22~~ \$22.50, of which 50 cents is a search and rescue surcharge.

(b) The fee for a personal watercraft 4 years of age or older is ~~\$15~~ \$15.50, of which 50 cents is a search and rescue surcharge.

(3) (a) Except as provided in subsection (3)(b), the age of a motorboat, sailboat, or personal watercraft is determined by subtracting the manufacturer's designated model year from the current calendar year.

(b) If the purchase year of a motorboat, sailboat, or personal watercraft precedes the designated model year of the motorboat, sailboat, or personal watercraft and the motorboat, sailboat, or personal watercraft is originally titled in Montana, then the purchase year is considered the model year for the purposes of calculating the fee in lieu of tax.

(4) The fee for a motorized canoe or a motorized rubber raft is ~~\$7.50~~, regardless of its length or age, is \$8, of which 50 cents is a search and rescue surcharge.

(5) The fee for a motorized pontoon ~~is \$20~~, regardless of its length or age, *is \$20.50, of which 50 cents is a search and rescue surcharge.*"

**Section 4.** Section 23-2-615, MCA, is amended to read:

**"23-2-615. Nonresident temporary-use permits — use of fees.** (1) The requirements pertaining to the nonresident temporary-snowmobile-use permit are as follows:

(a) Application for the issuance of the permit must be made at locations and upon forms prescribed by the department. The forms must include but are not limited to:

- (i) the applicant's name and permanent address;
- (ii) the make, model, year, and serial number of the snowmobile; and
- (iii) an affidavit declaring the nonresidency of the applicant.

(b) Upon submission of the application and a fee of ~~\$6~~ *\$6.50, of which 50 cents is a search and rescue surcharge*, a nonresident temporary-snowmobile-use sticker must be issued. The sticker must be displayed in a conspicuous manner on the snowmobile.

(2) The temporary permit is valid for a consecutive 30-day period as designated by the permit.

(3) The permit is not proof of ownership, and a certificate of ownership may not be issued.

(4) A nonresident temporary-snowmobile-use permit is not required for a snowmobile that qualifies as a racing snowmobile under 23-2-622.

(5) All money collected by payment of fees under this section must be remitted to the department of revenue and deposited in the state general fund.

(6) The failure to display the permit as required by this section or the making of false statements in obtaining the permit is a misdemeanor, punishable by a fine of not less than \$25 or more than \$100."

**Section 5.** Section 23-2-616, MCA, is amended to read:

**"23-2-616. Registration and decals — application and issuance — use of certain fees.** (1) Except for a snowmobile registered under 23-2-621, a snowmobile may not be operated on public lands by any person in Montana unless it has been registered and there is displayed in a conspicuous place on both sides of the cowl a decal as visual proof that the fee in lieu of property tax has been paid on it for the current year and the immediately previous year as required by 15-16-202.

(2) Application for registration must be made to the county treasurer upon forms to be furnished by the department of justice for this purpose, which may be obtained at the county treasurer's office in the county where the owner resides. The application must contain the following information:

- (a) the name and address of the owner;
- (b) the certificate of ownership number;
- (c) the make of the snowmobile;
- (d) the model name of the snowmobile;
- (e) the year of manufacture;
- (f) a statement evidencing payment of the fee in lieu of property tax as required by 15-16-202; and

(g) other information that the department of justice may require.

(3) The application must be accompanied by a decal-registration fee of ~~\$6.50~~ *\$7, of which 50 cents is a search and rescue surcharge*, and, if the snowmobile has previously been registered, by the registration certificate for the most recent year in which the snowmobile was registered. The treasurer shall sign the application and issue a registration receipt that must contain information considered necessary by the department of justice and a listing of fees paid. The owner shall retain possession of the registration receipt until it is surrendered to the county treasurer for reregistration or to a purchaser or subsequent owner pursuant to a transfer of ownership.

(4) The county treasurer shall forward the signed application to the department of justice and shall issue to the applicant a decal in the style and design prescribed by the department of justice and of a different color than the preceding year, numbered in sequence.

(5) The county treasurer may not accept any application under this section until the applicant has paid the decal-registration fee and the fee in lieu of property tax on the snowmobile for the current year and the immediately previous year as required by 15-16-202.

(6) All money collected from payment of decal-registration fees and all interest accruing from use of this money must be forwarded to the department of revenue, as provided in 15-1-504, for deposit in the state general fund.

(7) The county treasurer shall credit all fees in lieu of tax collected on snowmobiles to the state general fund.”

**Section 6.** Section 23-2-803, MCA, is amended to read:

**“23-2-803. Fee in lieu of tax on off-highway vehicles — exception — disposition of fees.** (1) There is a fee in lieu of tax on off-highway vehicles, other than off-highway vehicles constituting the inventory of a dealership licensed under 23-2-818, to be paid to the county treasurer of the county in which the owner of the off-highway vehicle resides.

(a) The fee for an off-highway vehicle less than 3 years old is ~~\$19~~ *\$19.50, of which 50 cents is a search and rescue surcharge*. In all other cases, the fee is ~~\$9~~ *\$9.50, of which 50 cents is a search and rescue surcharge*.

(b) Except as provided in subsection (1)(c), the age of an off-highway vehicle is determined by subtracting the manufacturer’s designated model year from the current calendar year.

(c) If the purchase year of an off-highway vehicle precedes the designated model year of the off-highway vehicle and the off-highway vehicle is originally titled in Montana, then the purchase year is considered the model year for the purposes of calculating the fee in lieu of tax.

(2) The county treasurer shall transfer all fees in lieu of tax collected on off-highway vehicles pursuant to this section to the state general fund.”

**Section 7.** Section 87-1-601, MCA, is amended to read:

**“87-1-601. Use of fish and game money.** (1) (a) Except as provided in ~~subsection subsections~~ *subsections (7) and (9)*, all money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from damages collected for violations of the fish and game laws of this state, or from appropriations or received by the department from any other state source

must be turned over to the department of revenue and placed in the state special revenue fund to the credit of the department.

(b) Any money received from federal sources must be deposited in the federal special revenue fund to the credit of the department.

(c) All interest earned on money from the following sources must be placed in the state special revenue fund to the credit of the department:

(i) the general license account;

(ii) the license drawing account;

(iii) accounts established to administer the provisions of 87-1-246, 87-1-258, 87-1-605, 87-2-412, 87-2-722, and 87-2-724; and

(iv) money received from the sale of any other hunting and fishing license.

(2) The money described in subsection (1) must be exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses, and expenditures authorized to be made by the department under the terms of this title. The money described in subsection (1) must be spent for those purposes by the department, subject to appropriation by the legislature.

(3) Any reference to the fish and game fund in this code means fish and game money in the state special revenue fund and the federal special revenue fund.

(4) Except as provided in subsections (7) and (8), all money collected or received from fines and forfeited bonds, except money collected or received by a justice's court, that relates to violations of state fish and game laws under Title 87 must be deposited by the department of revenue and credited to the department in a state special revenue fund account for this purpose. Out of any fine imposed by a court for the violation of the fish and game laws, the costs of prosecution must be paid to the county where the trial was held in any case in which the fine is not imposed in addition to the costs of prosecution.

(5) (a) Money must be deposited in an account in the permanent fund if it is received by the department from:

(i) the sale of surplus real property;

(ii) exploration or development of oil, gas, or mineral deposits from lands acquired by the department except royalties or other compensation based on production; and

(iii) leases of interests in department real property not contemplated at the time of acquisition.

(b) The interest derived from the account, but not the principal, may be used only for the purpose of operation, development, and maintenance of real property of the department and only upon appropriation by the legislature. If the use of money as set forth in this section would result in violation of applicable federal laws or state statutes specifically naming the department or money received by the department, then the use of this money must be limited in the manner, method, and amount to those uses that do not result in a violation.

(6) Money received from the collection of license drawing applications is not subject to the deposit requirements of 17-6-105. The department shall deposit license drawing application money within a reasonable time after receipt.

(7) Money collected or received from fines or forfeited bonds for the violation of 77-1-801, 77-1-806, or rules adopted under 77-1-804 must be deposited in the state general fund.

(8) The department of revenue shall deposit in the state general fund one-half of the money received from the fines pursuant to 87-1-102.

(9) (a) *The department shall deposit all money received from the search and rescue surcharge in 87-2-202 in a state special revenue account to the credit of the department for search and rescue purposes as provided for in [section 1].*

(b) *Upon certification by the department of reimbursement requests submitted by the department of military affairs for search and rescue missions involving persons engaged in hunting, fishing, or trapping, the department may transfer funds from the special revenue account to the search and rescue account provided for in [section 1] to reimburse counties for the costs of those missions as provided in [section 1].*

(c) *Using funds in the department's search and rescue account that are not already committed to reimbursement for search and rescue missions, the department may provide matching funds to the department of military affairs to reimburse counties for search and rescue training and equipment costs up to the proportion that the number of search and rescue missions involving persons engaged in hunting, fishing, or trapping bears to the statewide total of search and rescue missions.*

(d) *At the end of each fiscal year, any money remaining in the special revenue account after the transfers provided for in this section must be transferred to the general license account of the department."*

**Section 8.** Section 87-2-202, MCA, is amended to read:

**"87-2-202. (Temporary) Application — fee — expiration.** (1) A wildlife conservation license must be sold upon written application. The application must contain the applicant's name, age, [social security number,] occupation, street address of permanent residence, mailing address, qualifying length of time as a resident in the state of Montana, and status as a citizen of the United States or as an alien and must be signed by the applicant. The applicant shall present a valid Montana driver's license, a Montana driver's examiner's identification card, or other identification specified by the department to substantiate the required information when applying for a wildlife conservation license. It is the applicant's burden to provide documentation establishing the applicant's identity and qualifications to purchase a wildlife conservation license. It is unlawful and a misdemeanor for a license agent to sell a wildlife conservation license to an applicant who fails to produce the required identification at the time of application for licensure.

(2) Hunting, fishing, or trapping licenses issued in a form determined by the department must be recorded according to rules that the department may prescribe.

(3) (a) Resident wildlife conservation licenses may be purchased for a fee of \$4 \$4.25, of which 25 cents is a search and rescue surcharge.

(b) Nonresident wildlife conservation licenses may be purchased for a fee of \$7 \$7.25, of which 25 cents is a search and rescue surcharge.

(c) In addition to the fee in subsection (3)(a), the first time in any license year that a resident uses the wildlife conservation license as a prerequisite to purchase a hunting license, an additional hunting access enhancement fee of \$2 is assessed. The additional fee may be used by the department only to encourage enhanced hunting access through the hunter management and hunting access enhancement programs established in 87-1-265 through 87-1-267. The wildlife conservation license must be marked appropriately when the hunting access

enhancement fee is paid. The resident hunting access enhancement fee is chargeable only once during any license year.

(d) In addition to the fee in subsection (3)(b), the first time in any license year that a nonresident uses the wildlife conservation license as a prerequisite to purchase a hunting license, except a variably priced outfitter-sponsored Class B-10 or Class B-11 license issued under 87-1-268, an additional hunting access enhancement fee of \$10 is assessed. The additional fee may be used by the department only to encourage enhanced hunting access through the hunter management and hunting access enhancement programs established in 87-1-265 through 87-1-267. The wildlife conservation license must be marked appropriately when the hunting access enhancement fee is paid. The nonresident hunting access enhancement fee is chargeable only once during any license year.

(4) Licenses issued are void after the last day of February next succeeding their issuance.

[(5) The department shall keep the applicant's social security number confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]

(6) The department shall delete the applicant's social security number in any electronic database [5 years after the date that application is made for the most recent license]. (Terminates March 1, 2006—sec. 9, Ch. 216, L. 2001; bracketed language terminates or is amended on occurrence of contingency—sec. 3, Ch. 321, L. 2001.)

**87-2-202. (Effective March 1, 2006) Application — fee — expiration.**

(1) A wildlife conservation license must be sold upon written application. The application must contain the applicant's name, age, [social security number,] occupation, street address of permanent residence, mailing address, qualifying length of time as a resident in the state of Montana, and status as a citizen of the United States or as an alien and must be signed by the applicant. The applicant shall present a valid Montana driver's license, a Montana driver's examiner's identification card, or other identification specified by the department to substantiate the required information when applying for a wildlife conservation license. It is the applicant's burden to provide documentation establishing the applicant's identity and qualifications to purchase a wildlife conservation license. It is unlawful and a misdemeanor for a license agent to sell a wildlife conservation license to an applicant who fails to produce the required identification at the time of application for licensure.

(2) Hunting, fishing, or trapping licenses issued in a form determined by the department must be recorded according to rules that the department may prescribe.

(3) (a) Resident wildlife conservation licenses may be purchased for a fee of ~~\$4~~ *\$4.25, of which 25 cents is a search and rescue surcharge.*

(b) Nonresident wildlife conservation licenses may be purchased for a fee of ~~\$7~~ *\$7.25, of which 25 cents is a search and rescue surcharge.*

(4) Licenses issued are void after the last day of February next succeeding their issuance.

[(5) The department shall keep the applicant's social security number confidential, except that the number may be provided to the department of

public health and human services for use in administering Title IV-D of the Social Security Act.]

(6) The department shall delete the applicant's social security number in any electronic database [5 years after the date that application is made for the most recent license]. (Bracketed language terminates or is amended on occurrence of contingency—sec. 3, Ch. 321, L. 2001.)”

**Section 9. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 10, chapter 3, and the provisions of Title 10, chapter 3, apply to [section 1].

**Section 10. Effective dates.** (1) [Sections 1 through 7, 9, and 10] are effective January 1, 2004.

(2) [Section 8] is effective March 1, 2004.

Approved April 29, 2003

## CHAPTER NO. 535

[SB 414]

AN ACT PROVIDING AN EXTENDED SCHEDULE FOR APPLICANTS TO COMPLY WITH THE INCENTIVE PROGRAM FOR PRODUCTION OF GASOHOL; AMENDING SECTION 15-70-522, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 15-70-522, MCA, is amended to read:

**“15-70-522. Tax incentive for production of alcohol — written plan required — reservation of incentives — rules.** (1) (a) If the alcohol was produced in Montana from Montana agricultural products, including Montana wood or wood products, or if the alcohol was produced from non-Montana agricultural products when Montana products are not available, there is a tax incentive payable to alcohol distributors for distilling alcohol that:

- (i) ~~was is to be~~ blended with gasoline for sale as gasohol in Montana;
- (ii) was exported from Montana ~~and has been to be~~ blended with gasoline for sale as gasohol; or
- (iii) ~~was is to be~~ used in the production of ethyl butyl ether for use in reformulated gasoline.

(b) Payment must be made by the department out of the amount collected under 15-70-204.

(2) Except as provided in subsections (3) and (4), the tax incentive on each gallon of alcohol distilled in accordance with subsection (1) is 30 cents a gallon for each gallon that is 100% produced from Montana products, with the amount of the tax incentive for each gallon reduced proportionately, based upon the amount of agricultural or wood products not produced in Montana that is used in the production of the alcohol. Beginning July 1, 2010, there is no tax incentive.

(3) Regardless of the alcohol tax incentive provided in subsection (2), the total payments made for the incentive under this part may not exceed \$6 million in any consecutive 12-month period.

(4) An alcohol distributor may not receive tax incentive payments under subsection (2) that exceed \$3 million in any consecutive 12-month period.

(5) An alcohol distributor may not receive tax incentive payments under subsection (2) unless the distributor has provided a written *business plan* to the department of transportation at least 24 months before the distributor's anticipated collection of the tax incentives *and has complied with the schedule provided for in subsection (6)*. The plan must contain the following information:

(a) the source or sources of financing for the acquisition of the plant, land, and equipment used for the production of *alcohol for use in gasohol*;

(b) the anticipated source of agricultural products used in the production of *alcohol for use in gasohol*; and

(c) the anticipated time, quantity, and duration of production of *alcohol for use in gasohol*.

~~(6) (a) Except as provided in subsection (6)(b), the~~ An applicant that has provided the department with a written *business plan* shall meet the following schedule to be able to receive alcohol tax incentive payments:

(a) start building construction or remodeling within 24 months of the date on which the department received the *business plan*;

(b) complete 50% of construction or remodeling of a production facility within 36 months of the date on which the *business plan* was received; and

(c) complete 100% of construction or remodeling of a production facility and be in production of *alcohol for use in gasohol* for distribution within 48 months of the date on which the *business plan* was received.

(7) If the applicant does not adhere to the schedule in subsection (6), the applicant loses its priority for receiving incentive payments.

(8) After the department has verified production, the department shall begin payments of the alcohol tax incentives based on actual production according to the terms of subsection (2).

(9) The department shall reserve, in the order that written plans required under subsection (5) are received by the department, alcohol tax incentives based on the anticipated time, quantity, and duration of production. ~~Payment of the alcohol tax incentives must be based on actual production.~~

~~(b) No later than 1 year after the written plan is received under subsection (5), the department shall determine whether an alcohol distributor is complying with the written plan. The department may reduce or cancel the reservation of the tax incentive provided in this subsection (6) if the department determines that the alcohol distributor has not materially complied with the written plan.~~

~~(7)~~(10) A new tax incentive payment may not be made if the total tax incentive established in subsection (3) has been reserved or paid. If an alcohol tax incentive has been reduced or canceled, the amount by which the tax incentive has been reduced or canceled is available for reservation as provided in subsection ~~(6)~~(a) (9).

~~(8)~~(11) The department shall prescribe rules necessary to carry out the provisions of this section."

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

Approved April 29, 2003



**CHAPTER NO. 536**

[SB 442]

AN ACT PROVIDING FOR THE REGULATION OF EXOTIC WILDLIFE; PROVIDING THAT THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS MAY ISSUE PERMITS FOR AUTHORIZING THE POSSESSION OR SALE OF CONTROLLED EXOTIC WILDLIFE AND CHARGE A REASONABLE FEE FOR THE PERMIT; PROVIDING FOR LISTS OF NONCONTROLLED, CONTROLLED, AND PROHIBITED EXOTIC WILDLIFE; ESTABLISHING A CLASSIFICATION REVIEW COMMITTEE TO ADVISE THE FISH, WILDLIFE, AND PARKS COMMISSION REGARDING THE IMPORTATION, POSSESSION, AND SALE OF EXOTIC WILDLIFE; PROVIDING EXCEPTIONS AND EXEMPTIONS FROM THE REGULATION OF EXOTIC WILDLIFE; PROVIDING AN AMNESTY PROGRAM FOR EXOTIC WILDLIFE POSSESSED AS OF JANUARY 1, 2004; AMENDING SECTIONS 87-5-701, 87-5-702, 87-5-704, 87-5-712, AND 87-5-716, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

**Section 1. Regulation of exotic wildlife.** (1) A person may not import into the state, possess, or sell any exotic wildlife unless:

(a) the importation, possession, or sale of the exotic wildlife is allowed by law or commission rule; and

(b) the person has obtained authorization for importation from the department of livestock pursuant to Title 81, chapter 2, part 7.

(2) The department may issue a permit for authorizing the possession or sale of controlled exotic wildlife and make the permit available to persons who wish to import, possess, or sell controlled exotic wildlife, subject to rules of the commission and the department. The department may charge a reasonable fee, as determined by department rule, for the issuance of the authorization permit.

**Section 2. Noncontrolled exotic wildlife authorized for possession or sale.** (1) The following noncontrolled exotic wildlife may not be released or transplanted in the state, but may be possessed or sold as pets in Montana without a permit:

(a) tropical and subtropical birds in the order Passeriformes, including but not limited to birds in the families:

- (i) Sturnidae (mynahs);
- (ii) Ramphastidae (toucans, toucanettes);
- (iii) Fringillidae (siskins);
- (iv) Estrildidae (finches);
- (v) Emberizidae (cardinals);
- (vi) Ploceidae (weavers);
- (vii) Timaliidae (mesias);
- (viii) Viduinae (wydahs);
- (ix) Thraupidae (tanagers);
- (x) Zosteropidae (zosterops);
- (xi) Psittacidae (parrots);

- (xii) Loriidae (lories); and
- (xiii) Cacatuidae (cockatoos);
- (b) nonnative species in the subfamily Phasianae, except:
  - (i) chukar partridge (*Alectoris chukar*);
  - (ii) gray (Hungarian) partridge (*Perdix perdix*);
  - (iii) ring-necked pheasant (*Phasianus colchicus*); and
  - (iv) turkey (*Meleagris gallopavo*);
- (c) all tropical fish, subtropical fish, marine fish, common goldfish (*Carassius auratus*), and koi (*Cyprinus carpio*) for use in residential and office aquariums;
- (d) unless otherwise regulated pursuant to 87-5-116, all nonnative tropical and subtropical species of nonvenomous snakes not on the controlled or prohibited lists in the families:
  - (i) Boidae (boas);
  - (ii) Bolyeriidae (Round Island Boas);
  - (iii) Tropidophiidae (dwarf boas);
  - (iv) Pythonidae (pythons);
  - (v) Colubridae (modern snakes);
  - (vi) Acrochordidae (file and elephant trunk snakes);
  - (vii) Xenopeltidae (sunbeam snakes);
  - (viii) Aniliidae (pipe snakes);
  - (ix) Uropeltidae (shield-tailed snakes);
  - (x) Anomalepididae (blind snakes);
  - (xi) Leptotyphlopidae (blind snakes); and
  - (xii) Typhlopidae (blind snakes);
- (e) unless otherwise regulated pursuant to 87-5-116, all nonnative tropical and subtropical species of nonvenomous lizards not on the controlled or prohibited lists, including but not limited to the following families or subfamilies:
  - (i) Agamidae (chisel-teeth lizards);
  - (ii) Amphisbaenidae (worm lizards);
  - (iii) Anelytropsidae (limbless lizards);
  - (iv) Anguidae (glass and alligator lizards);
  - (v) Anniellidae (legless lizards);
  - (vi) Chamaeleonidae (chameleons);
  - (vii) Cordylidae (girdle-tailed lizards);
  - (viii) Corytophanidae (casquehead lizards);
  - (ix) Crotophytidae (collared and leopard lizards);
  - (x) Dibamidae (blind lizards);
  - (xi) Eublepharidae (eyelid geckos);
  - (xii) Feyliniidae (African snake skinks);

- (xiii) Gekkonidae (geckos);
- (xiv) Helodermatidae (beaded lizards and gila monsters);
- (xv) Iguanidae (iguanas);
- (xvi) Lacertidae (wall lizards);
- (xvii) Lanthanotidae (earless monitor);
- (xviii) Phrynosomatidae (earless, spiny, and horned lizards);
- (xix) Polychrotidae (anoles);
- (xx) Pygopodidae (snake lizards);
- (xxi) Scincidae (skinks);
- (xxii) Teiidae (whiptail);
- (xxiii) Tropiduridae (neotropical ground lizards);
- (xxiv) Varanidae (monitor lizard);
- (xxv) Xantusiidae (night lizards); and
- (xxvi) Xenosauridae (knob-scaled lizards);

(f) unless otherwise regulated pursuant to 87-5-116, all nonnative tropical and subtropical species of turtles with a carapace or shell length of more than 4 inches and not on the controlled or prohibited lists in the families:

- (i) Carettochelyidae (New Guinea softshell turtles);
- (ii) Chelidae (snake-necked turtles);
- (iii) Chelydridae (snapping turtles);
- (iv) Dermatemydidae (Central American river turtle);
- (v) Emydidae (pond turtles);
- (vi) Kinosternidae (mud turtles and musk turtles);
- (vii) Pelomedusidae (hidden-necked turtles);
- (viii) Platysternidae (big-headed turtle);
- (ix) Testudinidae (tortoises); and
- (x) Trionychidae (soft-shelled turtles);

(g) unless otherwise regulated pursuant to 87-5-116, all nonnative tropical and subtropical species of frogs and toads not on the controlled or prohibited lists in the families:

- (i) Atelopodidae (harlequin frogs);
- (ii) Bufonidae (true toads);
- (iii) Centrolenidae (glass frogs);
- (iv) Dendrobatidae (poison dart frogs);
- (v) Hylidae (tree frogs);
- (vi) Leptodactylidae (rain frogs);
- (vii) Microhylidae (narrow-mouthed toads);
- (viii) Pelobatidae (spadefoot toads);
- (ix) Pelodytidae (old world spadefoot toads);
- (x) Ranidae (true frogs, except bullfrogs, *Rana catesbeiana*);

- (xi) Rhacophoridae (old world tree frogs); and
- (xii) Rhinophrynidae (Mexican burrowing frog);

(h) unless otherwise regulated pursuant to 87-5-116, all nonnative tropical and subtropical species of limbless amphibians not on the controlled or prohibited lists in the families:

- (i) Caeciliidae (caecilians);
- (ii) Ichthyophiidae (fish caecilians);
- (iii) Rhinatrematidae (beaked caecilians);
- (iv) Scolecomorphidae (tropical caecilians); and
- (v) Uraeotyphlidae (Indian caecilians); and

(i) unless otherwise regulated pursuant to 87-5-116, all nonnative tropical and subtropical species of salamanders not on the controlled or prohibited lists in the families:

- (i) Ambystomatidae (mole salamanders);
- (ii) Amphiumidae (amphiumas);
- (iii) Cryptobranchidae (hellbenders);
- (iv) Dicamptodontidae (giant salamanders);
- (v) Hynobiidae (Asian salamanders);
- (vi) Plethodontidae (woodland salamanders);
- (vii) Proteidae (waterdogs);

(viii) Salamandridae (newts, except for rough-skinned newt, *Taricha granulosa*); and

- (ix) Sirenidae (sirens).

(2) The commission may by rule authorize the possession or sale of other species of noncontrolled exotic wildlife that are not listed in subsection (1) if it is determined that the other species present minimal disease, ecological, environmental, safety, or health risks.

**Section 3. Controlled exotic wildlife list.** As provided in 87-5-704(3)(a), the commission, after a public hearing and recommendation from the classification review committee established in [section 4], may by rule adopt a list of controlled exotic wildlife that may be imported, possessed, or sold only pursuant to commission and department rules and department authorization.

**Section 4. Classification review committee — composition, appointment, and duties.** (1) The director shall appoint a classification review committee whose duty is to advise the commission regarding the importation, possession, and sale of exotic wildlife, including recommendations on animals to be placed on the noncontrolled, controlled, or prohibited exotic wildlife list.

(2) The classification review committee is composed of at least one representative from:

- (a) the department;
- (b) the department of public health and human services;
- (c) the department of livestock;
- (d) the department of agriculture;

- (e) a business that breeds or exhibits exotic wildlife; and
- (f) the general public who has an interest in fish or wildlife.

(3) Members of the classification review committee are not entitled to compensation or travel expenses as provided in 2-15-122.

**Section 5. Exceptions and exemptions to possession and sale of exotic wildlife.** (1) [Sections 1 through 5] do not apply to:

(a) an accredited zoological garden chartered by the state as a nonprofit corporation if the zoological garden establishes that the proposed facilities are adequate to provide secure confinement of the exotic wildlife in question; or

(b) domestic animals.

(2) The department shall institute and administer an amnesty program for exotic wildlife possessed by a person as of January 1, 2004, who is not in compliance with [sections 1 through 4]. Until January 1, 2005, a person who reports that person's noncompliance to the department may not be prosecuted for a violation based on the reported noncompliance. Possession authorization must be provided by the department for species possessed as of January 1, 2004, and the authorization may include any conditions and restrictions necessary to minimize risks.

**Section 6.** Section 87-5-701, MCA, is amended to read:

**"87-5-701. Purpose.** The legislature finds that in order to protect ~~the Montana's native wildlife and plant species of Montana and to protect the, livestock, horticultural, forestry, and agricultural production of Montana, and human health and safety,~~ it is necessary to ~~provide for the control of regulate~~ the importation for introduction and the transplantation or introduction of wildlife in the state ~~and to regulate the importation, transplantation, possession, and sale of exotic wildlife.~~ Serious threats, known and unknown, ~~to the well being of native wildlife and plant species and to agricultural production, resulting from the introduction of wildlife and exotic wildlife into natural habitats, Montana necessitate the prohibition regulation of the importation for introduction and the transplantation or introduction of wildlife into natural habitats and regulation of the importation, transplantation, possession, and sale of exotic wildlife unless it can be shown that no harm will result from such the importation, transplantation, possession, sale, or introduction. Any importation for introduction or the, transplantation, possession, sale, or introduction permitted must be conducted in a manner to assure ensure that the introduced or transplanted population wildlife or exotic wildlife can be controlled if harm arises from unforeseen effects."~~

**Section 7.** Section 87-5-702, MCA, is amended to read:

**"87-5-702. Definitions.** For purposes of this part, the following definitions apply:

(1) "Controlled exotic wildlife" means species placed on the controlled exotic wildlife list under [section 3] that may be imported, possessed, or sold only pursuant to commission and department rules and an authorization permit provided for in [section 1(2)].

(2) "Domestic animal" means an animal that, through long association with humans, has been bred to a degree that has resulted in genetic changes affecting color, temperament, conformation, or other attributes of the species to an extent that makes the animal unique and distinguishable from wild individuals of the species and that is readily controllable if accidentally released into the wild. The

term includes livestock, as defined in 81-2-702, dogs, cats, rodents, Eurasian ferrets, and poultry.

(3) "Exotic wildlife" means a wildlife species that is not native to Montana.

~~(1)~~(4) "Feral" means the appearance in a natural habitat of an animal and any offspring that ~~has~~ have escaped domestication captivity and become wild.

~~(2)~~(5) "Importation" means the act of bringing into the state any wildlife receiving, bringing or having brought, or shipping into the state for a person's temporary or permanent residence or domicile any wildlife from a location outside the state.

~~(3)~~(6) "Introduction" means the release ~~of~~ from captivity or attempt to release from captivity, intentional or otherwise, wildlife from outside the state into natural habitats of the wild within the state.

(7) "Native wildlife" means a species or subspecies of wildlife that historically occurred in Montana and that has not been introduced by humans or has not migrated into Montana as a result of human activity.

~~(4)~~ "Natural habitat" means any area in which the introduction of wildlife species may result in an uncontrolled, naturally reproducing population of that species becoming established.

(8) "Noncontrolled exotic wildlife" means animal species traditionally sold or kept as pets and includes animals listed in [section 2] or animals that are added to the list in [section 2] by commission rule.

(9) "Possession" means to own or have control over an animal for personal use or resale.

(10) "Prohibited exotic wildlife" means animal species placed on the list provided in 87-5-704(3)(a) that may not be imported, possessed, or sold.

~~(5)~~(11) "Transplantation" means the release of or attempt to release, intentional or otherwise, wildlife from one place within the state into ~~natural habitats in~~ another part of the state.

~~(6)~~(12) (a) "Wildlife" means any wild mammal, bird, reptile, amphibian, fish, mollusk, crustacean, or other wild animal or the egg, sperm, embryo, or offspring thereof of the wild animal.

(b) The term does not include domestic animals."

**Section 8.** Section 87-5-704, MCA, is amended to read:

**"87-5-704. Rulemaking.** (1) The commission may adopt rules to implement 87-5-701, 87-5-702, and 87-5-711 through 87-5-715. In implementing 87-5-713, the commission may adopt rules approving species of wildlife that may be introduced by the department. In implementing 87-5-715, the commission may adopt rules to authorize the control or extermination by the department of introduced wildlife species.

(2) The department may adopt rules to implement 87-5-713 and 87-5-715. In implementing 87-5-713 and 87-5-715, the department may not adopt rules in the subject areas reserved to the commission in subsection (1).

(3) (a) The commission may adopt rules to implement [sections 1 through 5] regarding the importation, possession, and sale of exotic wildlife, including adoption of a list of controlled exotic wildlife and a list of prohibited exotic wildlife. The commission may by rule add to the list of noncontrolled exotic wildlife provided in [section 2]. The department of livestock may not issue import

permits for exotic wildlife on a list of controlled exotic wildlife or prohibited exotic wildlife without authorization from the department.

(b) The commission may adopt rules regarding the operation of the classification review committee established in [section 4].

(4) (a) The department may adopt rules regarding issuance of the authorization permit provided for in [section 1(2)], including the establishment of a reasonable fee for the permit.

(b) The department may adopt rules regarding the amnesty program provided for in [section 5(2)].”

**Section 9.** Section 87-5-712, MCA, is amended to read:

**“87-5-712. Authority for commission to control importation, possession, or sale generally of certain wildlife species and exotic wildlife.** The commission may, after public hearing and recommendation by the classification review committee in [section 4], list by administrative rule wildlife species or exotic wildlife ~~prohibited from importation that may not be imported, possessed, or sold as pets for captive breeding for research or commercial purposes or, for the commercial pet trade, or for any other reason.~~ A wildlife species or exotic wildlife may be placed on the list only after ~~if~~ the commission finds, ~~based on scientific investigation,~~ that:

(1) the exotic wildlife species, because of behavioral traits or other biological considerations, would not be readily subject to control by ~~man~~ humans while in captivity;

(2) ~~or that~~ if released into natural habitat from captivity, the exotic wildlife would pose a substantial threat to native wildlife and plants or agricultural production; or

(3) the exotic wildlife would pose a risk to human health or safety, livestock, or native wildlife through disease transmission, hybridization, or ecological or environmental damage.”

**Section 10.** Section 87-5-716, MCA, is amended to read:

**“87-5-716. Consultation with the departments of agriculture, public health and human services, and livestock.** The commission and the department shall consult with the departments of agriculture, public health and human services, and livestock in all matters relating to the control of wildlife species and exotic wildlife that may have a harmful effect on agricultural production or livestock operations in the state or that may pose a risk to human health or safety.”

**Section 11. Codification instruction.** [Sections 1 through 5] are intended to be codified as an integral part of Title 87, chapter 5, part 7, and the provisions of Title 87, chapter 5, part 7, apply to [sections 1 through 5].

**Section 12. Effective date.** [This act] is effective January 1, 2004.

**CHAPTER NO. 537**

[SB 446]

AN ACT TEMPORARILY TRANSFERRING THE FLATHEAD BASIN COMMISSION FROM THE GOVERNOR'S OFFICE TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR ADMINISTRATIVE PURPOSES; AMENDING SECTION 2-15-213, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

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

**Section 1.** Section 2-15-213, MCA, is amended to read:

**"2-15-213. Flathead basin commission — membership — compensation.** (1) There is a Flathead basin commission.

(2) The commission consists of 21 members selected as follows:

(a) seven members appointed by the governor from industrial, environmental, and other interests affected by Title 75, chapter 7, part 3, one of whom must be on the governor's staff;

(b) one member who is the director of the department of natural resources and conservation or the director's designee;

(c) one member appointed by the Flathead County commissioners;

(d) one member appointed by the Lake County commissioners;

(e) one member appointed by the Confederated Salish and Kootenai Tribes;

(f) one member appointed by the United States department of agriculture, forest service regional forester for the northern region;

(g) one member appointed by the United States department of interior, national park service regional director for the Rocky Mountain region;

(h) one member appointed by the Flathead County conservation district board of supervisors;

(i) one member appointed by the Lake County conservation district board of supervisors;

(j) four ex officio members appointed respectively by the chief executive of the provincial government of the Province of British Columbia; the regional administrator of the United States environmental protection agency; the regional administrator of the United States department of the interior, bureau of reclamation; and the holder of a license issued for the Flathead project under the Federal Power Act;

(k) two ex officio members who are the director of the department of environmental quality and the director of the department of fish, wildlife, and parks or their designees.

(3) The commissioners shall serve without pay. The commissioners listed in subsection (2)(a), except the commissioner on the governor's staff, are entitled to reimbursement for travel, meals, and lodging while engaged in commission business, as provided in 2-18-501 through 2-18-503.

(4) The commission is attached to the ~~governor's office~~ *department of natural resources and conservation* for administrative purposes only."



**Section 2. Instruction to code commissioner.** The code commissioner shall renumber 2-15-213 through 2-15-215 as an integral part of Title 2, chapter 15, part 33, and make any corresponding changes to reflect the renumbering.

**Section 3. Effective date.** [This act] is effective July 1, 2003.

**Section 4. Termination.** [This act] terminates June 30, 2005.

Approved April 29, 2003

## CHAPTER NO. 538

[SB 489]

AN ACT DESIGNATING U.S. INTERSTATE HIGHWAYS IN MONTANA AS THE "PURPLE HEART TRAIL"; AND AMENDING SECTION 60-2-242, MCA.

WHEREAS, on August 7, 1782, at his Newburgh, New York, headquarters, George Washington devised a badge of distinction to be worn by enlisted men and noncommissioned officers; and

WHEREAS, the badge, named the Badge of Military Merit and patterned in the "figure of a heart in purple cloth or silk edged with narrow lace or binding", was awarded for "any singularly meritorious action", permitted the wearer to pass guards and sentinels without challenge, and required the honoree's name and regiment to be inscribed in a Book of Merit; and

WHEREAS, after the Revolutionary War, no more American soldiers received the Badge of Military Merit; and

WHEREAS, the valiant efforts in 1927 by Army Chief of Staff General Charles P. Summerall to revive the Badge of Military Merit ultimately failed in Congress; and

WHEREAS, on January 7, 1931, Army Chief of Staff General Douglas MacArthur pursued a new medal that the War Department formally announced on February 22, 1932; and

WHEREAS, after the award was reinstated, recipients of a Meritorious Service Citation Certificate during World War I, along with other eligible soldiers, could exchange their award for the Purple Heart; and

WHEREAS, Army regulations at the time defined the conditions of the award as "a wound which necessitates treatment by a medical officer and which is received in action with an enemy, may in the judgment of the commander authorized to make the award be construed as resulting from a singularly meritorious act of essential service"; and

WHEREAS, the award of the Purple Heart still represents the thoughts reflected in George Washington's orderly book dated August 7, 1782: "The road to glory in a patriot army and a free country is thus open to all."

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

**Section 1. Purple heart trail.** The purple heart trail is the U.S. interstate highway system in Montana.

**Section 2.** Section 60-2-242, MCA, is amended to read:

**"60-2-242. Markers — commemorative highways.** (1) As funds are available under subsection (2), the department may design and erect signs along

the commemorative highways designated in 60-1-202 through 60-1-207 and [section 1] identifying the routes and providing interpretive information.

(2) The department may accept money from other state agencies, federal agencies, local governments, or private persons for the purposes of subsection (1) and may expend the money received for those purposes.

(3) *For the purposes of subsection (2), private persons includes commonly recognized military veterans' organizations, including but not limited to the veterans of foreign wars, the American legion, the disabled American veterans, the Vietnam veterans of America, and the military order of the purple heart.*

**Section 3. 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].

Approved April 29, 2003

## CHAPTER NO. 539

[SB 491]

AN ACT AUTHORIZING THE USE OF THE RESEARCH AND COMMERCIALIZATION ACCOUNT FOR THE PAYMENT OF THE ADMINISTRATIVE COSTS INCURRED BY THE BOARD OF RESEARCH AND COMMERCIALIZATION TECHNOLOGY IN ADMINISTERING RESEARCH AND COMMERCIALIZATION PROJECTS; AMENDING SECTIONS 90-3-1001, 90-3-1002, AND 90-3-1003, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 90-3-1001, MCA, is amended to read:

**"90-3-1001. Purpose — definition.** (1) The purpose of establishing a research and commercialization special revenue account in 90-3-1002 and 90-3-1003 is to:

(a) provide a predictable and stable source of funding for research and commercialization projects conducted in the state that demonstrates to both private and public sources, including federal research granting agencies, that Montana recognizes the important contributions that research and commercialization endeavors offer to the state's basic industries;

(b) expand and strengthen research efforts for the state's basic industries to increase their economic impact on the state's economy; ~~and~~

(c) expand research efforts into areas beyond the scope of the state's basic industries to diversify and strengthen the state's economic security through the creation of technology-based operations and long-term quality jobs; *and*

(d) *pay costs of administering this part pursuant to 90-3-1003.*

(2) As used in 90-3-1002 and 90-3-1003, "research and commercialization center" means the campuses of the university of Montana or Montana state university, tribal colleges, colleges of technology, community colleges, agricultural research centers, or a private laboratory or research center."

**Section 2.** Section 90-3-1002, MCA, is amended to read:

**“90-3-1002. Research and commercialization account.** (1) There is a research and commercialization special revenue account within the state treasury. The purpose of the account is to establish a permanent source of funding for research and commercialization projects to be conducted at research and commercialization centers in the state *and to pay the costs of administering those projects.*

(2) The research and commercialization account must be invested by the board of investments. Earnings on the account must be deposited in the account for distribution pursuant to 90-3-1003(3), (4), and (7).”

**Section 3.** Section 90-3-1003, MCA, is amended to read:

**“90-3-1003. Research and commercialization account — use.** (1) The research and commercialization account provided for in 90-3-1002 is statutorily appropriated, as provided in 17-7-502, to the board of research and commercialization technology, provided for in 2-15-1819, for the purposes provided in this section.

(2) The establishment of the account in 90-3-1002 is intended to enhance the economic growth opportunities for Montana and constitute a public purpose.

(3) The account may be used only for:

(a) loans that are to be used for research and commercialization projects to be conducted at research and commercialization centers located in Montana;

(b) grants that are to be used for production agriculture research and commercialization projects to be conducted at research and commercialization centers located in Montana; ~~or~~

(c) matching funds for grants from nonstate sources that are to be used for research and commercialization projects to be conducted at research and commercialization centers located in Montana; *or*

(d) *administrative costs that are incurred by the board in carrying out the provisions of this part.*

(4) At least 20% of the account funds approved for research and commercialization projects must be directed toward projects that enhance production agriculture.

(5) An applicant for a grant shall provide matching funds from nonstate sources equal to 25% of total project costs. The requirement to provide matching funds is a qualifier, but not a criterion, for approval of a grant.

(6) The board shall establish policies, procedures, and criteria that achieve the objectives in its research and commercialization strategic plan for the awarding of grants and loans. The criteria must include:

(a) the project's potential to diversify or add value to a traditional basic industry of the state's economy;

(b) whether the project shows promise for enhancing technology-based sectors of Montana's economy or promise for commercial development of discoveries;

(c) whether the project employs or otherwise takes advantage of existing research and commercialization strengths within the state's public university and private research establishment;

(d) whether the project involves a realistic and achievable research project design;

- (e) whether the project develops or employs an innovative technology;
- (f) verification that the project activity is located within the state;
- (g) whether the project's research team possesses sufficient expertise in the appropriate technology area to complete the research objective of the project;
- (h) verification that the project was awarded based on its scientific merits, following review by a recognized federal agency, philanthropic foundation, or other private funding source; and

(i) whether the project includes research opportunities for students.

(7) The board shall direct the state treasurer to distribute funds for approved projects. Unallocated interest and earnings from the account must be retained in the account. Repayments of loans and any agreements authorizing the board to take a financial right to licensing or royalty fees paid in connection with the transfer of technology from a research and commercialization center to another nonstate organization or ownership of corporate stock in a private sector organization must be deposited in the account.

(8) The board shall refer grant applications to external peer review groups. The board shall compile a list of persons willing to serve on peer review groups for purposes of this section. The peer review group shall review the application and make a recommendation to the board as to whether the application for a grant should be approved. The board shall review the recommendation of the peer review group and either approve or deny a grant application.

(9) The board shall identify whether a grant or loan is to be used for basic research, applied research, or some combination of both. For the purposes of this section, "applied research" means research that is conducted to attain a specific benefit or solve a practical problem and "basic research" means research that is conducted to uncover the basic function or mechanism of a scientific question."

**Section 4. Effective date.** [This act] is effective July 1, 2003.

Approved April 29, 2003

## CHAPTER NO. 540

[HB 259]

AN ACT INCREASING THE SPEED LIMIT TO 70 MILES AN HOUR ON U.S. HIGHWAY 93 BETWEEN THE CANADIAN BORDER AND REFERENCE MARKER 133 NORTHWEST OF WHITEFISH; AMENDING SECTION 61-8-303, MCA; AND PROVIDING AN EFFECTIVE DATE.

*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, 61-8-312, ~~and subsection (2) of this section,~~ and subsection (2) of this section, the speed limit for vehicles traveling:

(a) on a federal-aid interstate highway outside an urbanized area of 50,000 population or more is 75 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.

~~(2) The speed limit for vehicles traveling on U.S. highway 93 between the Canadian and Idaho borders is 65 miles an hour at all times. The speed limit imposed by this subsection ceases to be effective if U.S. highway 93 is upgraded to a continuous four-lane highway.~~

(2) *The speed limit for vehicles traveling on U.S. highway 93 between reference marker 133 northwest of Whitefish and the Idaho border is 65 miles an hour at all times. The speed limit imposed by this subsection ceases to be effective if U.S. highway 93 is upgraded to a continuous four-lane highway.*

(3) 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.

(4) Subject to the maximum speed limits set forth in ~~subsections~~ *subsections* (1) ~~and (2)~~ *and (2)*, 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.

(5) When no special hazard exists that requires lower speed for compliance with ~~subsections~~ *subsections* (1) ~~and (2)~~ *and (2)*, the speed of a vehicle not in excess of the limits specified in this section or established as authorized in 61-8-309 through 61-8-311 and 61-8-313 is lawful, but a speed in excess of 25 miles an hour in an urban district is unlawful.

(6) "Daytime" means from one-half hour before sunrise to one-half hour after sunset. "Nighttime" means at any other hour.

(7) 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."

**Section 2. Effective date.** [This act] is effective May 23, 2003.

Approved April 30, 2003

## CHAPTER NO. 541

[HB 705]

AN ACT INCREASING THE UTILIZATION FEE ON NURSING FACILITY BED DAYS; CREATING AN ACCOUNT IN THE STATE SPECIAL REVENUE FUND FOR FUNDING INCREASES IN MEDICAID PAYMENTS; PROVIDING AN APPROPRIATION; AMENDING SECTION 15-60-102, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 15-60-102, MCA, is amended to read:

**"15-60-102. (Temporary) Utilization fee for bed days in nursing facilities.** (1) A nursing facility in the state shall pay to the department of ~~revenue~~ a utilization fee for each bed day in the facility in the following amounts:

(a) in the amount of \$2.80 for each bed day in the facility, which must be applied to maintain the price-based average payment rate to nursing facilities at the fiscal year 2003 base amount;

(b) in fiscal year 2004, an additional amount of \$1.70 to be used to increase the price-based average payment rate to nursing facilities above the fiscal year 2003 base as provided in [section 2]; and

(c) beginning July 1, 2004, an additional amount of \$2.50 to be used to increase the price-based average payment rate to nursing facilities above the fiscal year 2003 base as provided in [section 2].

(2) The fees collected must be deposited as follows:

(a) the amounts collected as provided in subsection (1)(a), in the general fund; and

(b) the amounts collected as provided in subsections (1)(b) and (1)(c), in the account in the state special revenue fund as provided in [section 2].

(3) A nursing facility may not place a fee created in this section on a patient's bill. (Void on occurrence of contingency—sec. 18, Ch. 746, L. 1991—see chapter compiler's comment.)”

**Section 2. State special revenue account.** (1) There is a nursing facility utilization fee account in the state special revenue fund as provided in 17-2-102.

(2) All money collected under [section 1(1)(b) and (1)(c)] must be deposited in this account. Money in the account must be used by the department of public health and human services for the purpose of increasing the average price paid for medicaid nursing facility services above the fiscal year 2003 level under the price-based reimbursement system used to establish medicaid payment rates to nursing homes.

(3) Money remaining in this account at the end of a fiscal year may not be expended or transferred for any other purpose and is subject to appropriation by a subsequent legislature for purposes consistent with subsection (2).

**Section 3. Appropriation.** (1) The following money is appropriated to the department of public health and human services from the account in the state special revenue fund created in [section 2] to fund increases in medicaid payments to nursing facilities:

Fiscal Year 2004

State special revenue fund	\$3,499,484
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Fiscal Year 2005

State special revenue fund	\$5,172,033
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(2) The following money is appropriated to the department of public health and human services for increases in medicaid payments to nursing facilities:

Fiscal year 2004

Federal special revenue fund	\$9,404,218
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Fiscal year 2005

Federal special revenue fund	\$13,587,608
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**Section 4. Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 15, chapter 60, part 2, and the provisions of Title 15, chapter 60, part 2, apply to [section 2].

**Section 5. Effective date.** [This act] is effective July 1, 2003.

Approved April 30, 2003

**CHAPTER NO. 542**

[SB 101]

AN ACT ALLOWING THE MONTANA HERITAGE PRESERVATION AND DEVELOPMENT COMMISSION TO USE THE SERVICES OF VOLUNTEERS; REQUIRING WORKERS' COMPENSATION COVERAGE FOR THE VOLUNTEERS; AUTHORIZING REIMBURSEMENT OF CERTAIN EXPENSES OF THE VOLUNTEERS; AUTHORIZING THE COMMISSION TO SELL REAL AND PERSONAL PROPERTY; AUTHORIZING THE COMMISSION TO ESTABLISH TRUST FUNDS; AUTHORIZING THE COMMISSION TO OBTAIN FEDERAL MONEY AND REQUIRING THE DEPOSIT OF THE FEDERAL MONEY INTO THE MONTANA HERITAGE PRESERVATION AND DEVELOPMENT ACCOUNT; REQUIRING THE COMMISSION TO ESTABLISH A SUBCOMMITTEE OF COMMISSION MEMBERS AND MEMBERS OF THE MONTANA HISTORICAL SOCIETY BOARD; REQUIRING A MAJORITY VOTE OF THE SUBCOMMITTEE PRIOR TO SELLING PERSONAL PROPERTY FROM THE BOVEY ASSETS; REQUIRING THAT FUNDS RECEIVED FROM THE SALE OF PERSONAL PROPERTY FROM THE BOVEY ASSETS BE DEPOSITED IN A TRUST FUND; TRANSFERRING TITLE OF THE BOVEY ASSETS TO THE STATE OF MONTANA; AMENDING SECTIONS 22-3-1003 AND 22-3-1004, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 22-3-1003, MCA, is amended to read:

**"22-3-1003. Powers of commission — contracts — rules.** (1) (a) The Montana heritage preservation and development commission may contract with private organizations to assist in carrying out the purpose of 22-3-1001. The term of a contract may not exceed 20 years.

(b) ~~Notwithstanding the~~ *The provisions of Title 18, may not be construed as prohibiting the contracts under this section may be from being* let by direct negotiation. The contracts may be entered into directly with a vendor and are not subject to state procurement laws.

(c) Architectural and engineering review and approval do not apply to the historic renovation projects.

(d) The contracts must provide for the payment of prevailing wages.

(e) A contract for supplies or services, or both, may be negotiated in accordance with commission rules.

(f) Management activities must be undertaken to encourage the profitable operation of properties.

(g) Contracts may include the lease of property managed by the commission. Provisions for the renewal of a contract must be contained in the contract.

(2) (a) Except as provided in subsection (2)(b), the commission may not contract for the construction of a building, as defined in 18-2-101, in excess of \$200,000 without the consent of the legislature. Building construction must be in conformity with applicable guidelines developed by the national park service of the U.S. department of the interior, the Montana historical society, and the Montana department of fish, wildlife, and parks.

(b) The commission may contract for the preservation, stabilization, or maintenance of existing structures or buildings for an amount that exceeds \$200,000 without legislative consent if the commission determines that waiting for legislative consent would cause unnecessary damage to the structures or buildings or would result in a significant increase in cost to conduct those activities in the future.

(3) (a) Subject to subsection (3)(b), the commission, as part of a contract, shall require that a portion of any profit be reinvested in the property and that a portion be used to pay the administrative costs of the property and the commission.

(b) (i) Until the balance in the cultural and aesthetic trust reaches \$7,750,000, the commission shall deposit the portion of profits not used for administrative costs and restoration of the properties in the cultural and aesthetic trust.

(ii) Once the balance in the cultural and aesthetic trust reaches \$7,750,000, the commission shall deposit the portion of profits not used for administrative costs and restoration of the properties in the general fund.

~~(c) It is the intent of the 57th legislature that no general fund money be provided for the operation and maintenance of Virginia City and Nevada City beyond what has been appropriated by the 55th legislature. It is the intent of the 58th legislature that no general fund money be provided for the operations and maintenance of Virginia City and Nevada City beyond what has been appropriated by the 55th legislature.~~

(4) The commission may solicit funds from other sources, *including the federal government*, for the purchase, management, and operation of properties.

(5) (a) *The commission may use volunteers to further the purposes of this part.*

*(b) The commission and volunteers stand in the relationship of employer and employee for purposes of and as those terms are defined in Title 39, chapter 71. The commission shall provide each volunteer with workers' compensation coverage, as provided in Title 39, chapter 71, during the course of the volunteer's assistance.*

*(6) Volunteers are not salaried employees and are not entitled to wages and benefits. The commission may, in its discretion, reimburse volunteers for their otherwise uncompensated out-of-pocket expenses, including but not limited to their expenditures for transportation, food, and lodging.*

*(7) The commission shall establish a subcommittee composed of an equal number of members of the Montana historical society board of trustees and commission members to review and recommend the sale of personal property from the former Bovey assets acquired by the 55th legislature. A recommendation to sell may be presented to the commission only if the recommendation is supported by a majority of the members of the subcommittee.*

~~(5)(8)~~ (8) The commission shall adopt rules establishing a policy for making acquisitions and sales of real and personal property. With respect to each acquisition or sale, the policy must give consideration to:

- (a) whether the property represents the state's culture and history;
- (b) whether the property can become self-supporting;



(c) whether the property can contribute to the economic and social enrichment of the state;

(d) whether the property lends itself to programs to interpret Montana history;

(e) whether the acquisition *or sale* will create significant social and economic impacts to affected local governments and the state; ~~and~~

(f) *whether the sale is supported by the director of the Montana historical society;*

(g) *whether the commission should include any preservation covenants in a proposed sale agreement for real property;*

(h) *whether the commission should incorporate any design review ordinances established by Virginia City into a proposed sale agreement for real property; and*

~~(i)~~(i) other matters that the commission considers necessary or appropriate.

(9) *Except as provided in subsection (11), the proceeds of any sale under subsection (8) must be placed in the account established in 22-3-1004.*

~~(10)~~(10) Public notice and the opportunity for a hearing must be given in the geographical area of a proposed acquisition *or sale of real property* before a final decision to acquire *or sell* ~~a~~ the property is made. The commission shall approve proposals for acquisition *or sale of real property* and recommend the approved proposal to the board of land commissioners.

(11) *The commission, working with the board of investments, may establish trust funds to benefit historic properties. Interest from any trust fund established under this subsection must be used to preserve and manage assets owned by the commission. Funds from the sale of personal property from the Bovey assets must be placed in a trust fund, and interest from the trust fund must be used to manage and protect the remaining personal property.*

~~(12)~~(12) Prior to the convening of each regular session, the commission shall report to the governor and the legislature, as provided in 5-11-210, concerning financial activities during the prior biennium, *including the acquisition or sale of any assets.*"

**Section 2.** Section 22-3-1004, MCA, is amended to read:

**"22-3-1004. Montana heritage preservation and development account.** (1) (a) There is a Montana heritage preservation and development account in the state special revenue fund *and in the federal special revenue fund.*

(b) *The Montana heritage preservation and development commission shall deposit any federal money that the commission obtains into the appropriate account provided for in this section.*

(2) Money deposited in the ~~account~~ *accounts* must be used for:

(a) the purchase of properties in Virginia City and Nevada City;

(b) restoration, maintenance, and operation of historic properties in Virginia City and Nevada City; and

(c) purchasing, restoring, and maintaining historically significant properties in Montana that are in need of preservation.

(3) The ~~account is~~ *accounts* are statutorily appropriated, as provided in 17-7-502, to the ~~Montana heritage preservation and development~~ commission to be used as provided in this section.

(4) ~~All~~ *Unless otherwise prohibited by law or agreement, all interest earned on money in the ~~account~~ accounts must be deposited in the state special revenue fund to the credit of the commission.*

**Section 3. Transfer of title.** Title to the real and personal property acquired by the 55th legislature and commonly referred to as the "Bovey assets" is transferred from the Montana historical society to the state of Montana.

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved April 30, 2003

## CHAPTER NO. 543

[SB 325]

AN ACT REVISING THE RESTRICTIONS ON SUBDIVISION ACTIVITIES UNDER THE SANITATION IN SUBDIVISIONS LAWS; AMENDING SECTION 76-4-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 76-4-121, MCA, is amended to read:

**"76-4-121. Restrictions on subdivision activities.** A person may not dispose of any lot within a subdivision, erect any facility for the supply of water or disposal of sewage or solid waste, erect any building or shelter in a subdivision that requires facilities for the supply of water or disposal of sewage or solid waste, or occupy any permanent buildings in a subdivision until ~~the subdivision plat or certificate of survey subject to review under this part has been accepted for filing by the county clerk and recorder in accordance with 76-4-122 and recorded pursuant to Title 70, chapter 21:~~

(1) *a certificate of subdivision approval has been issued pursuant to 76-4-125 indicating that the reviewing authority has approved the subdivision application and that the subdivision is not subject to a sanitary restriction;*

(2) *the governing body has provided certification pursuant to 76-4-127 that the subdivision is within a jurisdictional area that has adopted a growth policy pursuant to chapter 1 of this title or within a first-class or second-class municipality, as described in 7-1-4111, and will be provided with adequate municipal facilities and adequate storm water drainage; or*

(3) *the subdivision is otherwise exempt from review under 76-4-125."*

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

Approved April 30, 2003

## CHAPTER NO. 544

[SB 407]

AN ACT CREATING THE MONTANA ECONOMIC DEVELOPMENT TAX ACT; PROVIDING FOR A LIMITED SALES TAX AND USE TAX ON CERTAIN PROPERTY AND SERVICES; REDUCING INDIVIDUAL INCOME TAX RATES; ESTABLISHING A CAPITAL GAINS CREDIT; PROVIDING FOR COLLECTION OF THE LIMITED SALES TAX AND USE TAX;

PROVIDING FOR DISTRIBUTION OF THE LIMITED SALES TAX AND USE TAX REVENUE; CLARIFYING THE DEFINITION OF "CONSUMER PRICE INDEX" RELATING TO INDIVIDUAL INCOME TAX PROVISIONS; AMENDING INDIVIDUAL INCOME TAX EXEMPTIONS; LIMITING THE INDIVIDUAL INCOME TAX DEDUCTION FOR FEDERAL INCOME TAX PAID; AMENDING THE INDIVIDUAL INCOME TAX STANDARD DEDUCTION; ALLOWING RESIDENTS A CREDIT AGAINST INDIVIDUAL INCOME TAXES FOR THEIR SHARE OF TAXES IMPOSED AND PAID TO ANOTHER STATE OR COUNTRY BY A PARTNERSHIP OF WHICH THE RESIDENT IS A PARTNER; INCREASING THE CIGARETTE TAX FROM 18 CENTS TO 70 CENTS ON A PACK OF CIGARETTES AND REVISING THE DISTRIBUTION OF THE CIGARETTE TAX; ADJUSTING THE CIGARETTE INSIGNIA DISCOUNTS; INCREASING THE TAX ON TOBACCO PRODUCTS FROM 12.5 PERCENT TO 25 PERCENT; PROVIDING FOR A TAX ON EACH OUNCE OF MOIST SNUFF; ADJUSTING THE WHOLESALER'S DISCOUNT FOR TOBACCO PRODUCTS; AMENDING SECTIONS 13-37-218, 15-30-101, 15-30-103, 15-30-112, 15-30-121, 15-30-122, 15-30-124, 15-30-142, 16-11-111, 16-11-114, 16-11-119, 16-11-201, 16-11-202, AND 16-11-206, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES.

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

**Section 1. Short title.** [This act] may be cited as the "Montana Economic Development Tax Act".

**Section 2. Definitions.** For purposes of [sections 2 through 39], unless the context requires otherwise, the following definitions apply:

(1) (a) "Accommodations" means a building or structure containing individual sleeping rooms or suites that provides overnight lodging facilities for periods of less than 30 days to the general public for compensation.

(b) Accommodations includes a facility represented to the public as a hotel, motel, campground, resort, dormitory, condominium inn, dude ranch, guest ranch, hostel, public lodginghouse, or bed and breakfast facility.

(c) The term does not include a health care facility, as defined in 50-5-101, any facility owned by a corporation organized under Title 35, chapter 2 or 3, that is used primarily by persons under 18 years of age for camping purposes, any hotel, motel, hostel, public lodginghouse, or bed and breakfast facility whose average daily accommodation charge for single occupancy does not exceed 60% of the amount authorized under 2-18-501 for the actual cost of lodging for travel within the state of Montana, or any other facility that is rented solely on a monthly basis or for a period of 30 days or more.

(2) (a) "Admission" means payment made for the privilege of being admitted to a facility, place, or event.

(b) The term does not include payment for admittance to a movie theater or to a sporting event sanctioned by a school district, college, or university.

(3) (a) "Base rental charge" means the following:

(i) charges for time of use of the rental vehicle and mileage, if applicable;

(ii) charges accepted by the renter for personal accident insurance;

(iii) charges for additional drivers or underage drivers; and

(iv) charges for child safety restraints, luggage racks, ski racks, or other accessory equipment for the rental vehicle.

(b) The term does not include:

(i) rental vehicle price discounts allowed and taken;

(ii) rental charges or other charges or fees imposed on the rental vehicle owner or operator for the privilege of operating as a concessionaire at an airport terminal building;

(iii) motor fuel;

(iv) intercity rental vehicle drop charges; or

(v) taxes imposed by the federal government or by state or local governments.

(4) (a) "Campground" means a place used for public camping where persons may camp, secure tents, or park individual recreational vehicles for camping and sleeping purposes.

(b) The term does not include that portion of a trailer court, trailer park, or mobile home park intended for occupancy by trailers or mobile homes for resident dwelling purposes for periods of 30 consecutive days or more.

(5) "Engaging in business" means carrying on or causing to be carried on any activity with the purpose of receiving direct or indirect benefit.

(6) (a) "Lease", "leasing", or "rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend.

(b) Lease or rental includes agreements covering motor vehicles and trailers when the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property, as defined in 26 U.S.C. 7701(h)(1).

(c) The term does not include:

(i) a transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(ii) a transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of \$100 or 1% of the total required payments; or

(iii) providing tangible personal property with an operator if an operator is necessary for the equipment to perform as designed and not just to maintain, inspect, or set up the tangible personal property.

(d) This definition must be used for sales tax and use tax purposes regardless of whether a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, the Montana Uniform Commercial Code, or other provisions of federal, state, or local law.

(e) This definition must be applied only prospectively from the date of adoption and has no retroactive impact on existing leases or rentals.

(7) (a) "Motor vehicle" means a light vehicle as defined in 61-1-139, a motorcycle as defined in 61-1-105, a motor-driven cycle as defined in 61-1-106, a

quadricycle as defined in 61-1-133, a motorboat or a sailboat as defined in 23-2-502, an off-highway vehicle as defined in 23-2-801 that:

- (i) is rented for a period of not more than 30 days;
  - (ii) is rented without a driver, pilot, or operator; and
  - (iii) is designed to transport 15 or fewer passengers.
- (b) Motor vehicle includes:
- (i) a rental vehicle rented pursuant to a contract for insurance; and
  - (ii) a truck, trailer, or semitrailer that has a gross vehicle weight of less than 22,000 pounds, that is rented without a driver, and that is used in the transportation of personal property.
- (c) The term does not include farm vehicles, machinery, or equipment.
- (8) "Permit" or "seller's permit" means a seller's permit as described in [section 18].
- (9) "Person" means an individual, estate, trust, fiduciary, corporation, partnership, limited liability company, limited liability partnership, or any other legal entity.
- (10) "Purchaser" means a person to whom a sale of personal property is made or to whom a service is furnished.
- (11) "Rental vehicle" means a motor vehicle that is used for or by a person other than the owner of the motor vehicle through an arrangement and for consideration.
- (12) "Retail sale" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent.
- (13) "Sale" or "selling" means the transfer of property for consideration or the performance of a service for consideration.
- (14) (a) "Sales price" applies to the measure subject to sales tax and means the total amount or consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented or valued in money, whether received in money or otherwise, without any deduction for the following:
- (i) the seller's cost of the property sold;
  - (ii) the cost of materials used, labor or service costs, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
  - (iii) charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
  - (iv) delivery charges;
  - (v) installation charges;
  - (vi) the value of exempt personal property given to the purchaser when taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise; and
  - (vii) credit for any trade-in.
- (b) The amount received for charges listed in subsections (14)(a)(iii) through (14)(a)(vii) are excluded from the sales price if they are separately stated on the invoice, billing, or similar document given to the purchaser.

(c) The term does not include:

(i) discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;

(ii) interest, financing, and carrying charges from credit extended on the sale of personal property or services if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; or

(iii) any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser.

(d) In an exchange in which the money or other consideration received does not represent the value of the property or service exchanged, sales price means the reasonable value of the property or service exchanged.

(e) When the sale of property or services is made under any type of charge or conditional or time-sales contract or the leasing of property is made under a leasing contract, the seller or lessor shall treat the sales price, excluding any type of time-price differential, under the contract as the sales price at the time of the sale.

(15) "Sales tax" and "use tax" mean the applicable tax imposed by [section 3].

(16) "Seller" means a person that makes sales, leases, or rentals of personal property or services.

(17) (a) "Service" means an activity that is engaged in for another person for consideration and that is distinguished from the sale or lease of property. Service includes activities performed by a person for its members or shareholders.

(b) In determining what a service is, the intended use, principal objective, or ultimate objective of the contracting parties is irrelevant.

(18) "Use" or "using" includes use, consumption, or storage, other than storage for resale or for use solely outside this state, in the ordinary course of business.

**Section 3. Imposition and rate of sales tax and use tax — exceptions.**

(1) A sales tax of the following percentages is imposed on sales of the following property or services:

(a) 3% on accommodations and campgrounds;

(b) 4% on the base rental charge for rental vehicles.

(2) The sales tax is imposed on the purchaser and must be collected by the seller and paid to the department by the seller. The seller holds all sales taxes collected in trust for the state. The sales tax must be applied to the sales price.

(3) (a) For the privilege of using property or services within this state, there is imposed on the person using the following property or services a use tax equal to the following percentages of the value of the property or services:

(i) 3% on accommodations and campgrounds;

(ii) 4% on the base rental charge for rental vehicles.

(b) The use tax is imposed on property or services that were:

(i) acquired outside this state as the result of a transaction that would have been subject to the sales tax had it occurred within this state;

(ii) acquired within the exterior boundaries of an Indian reservation within this state as a result of a transaction that would have been subject to the sales

tax had it occurred outside the exterior boundaries of an Indian reservation within this state;

(iii) acquired as the result of a transaction that was not initially subject to the sales tax imposed by subsection (1) or the use tax imposed by subsection (3)(a) but which transaction, because of the buyer's subsequent use of the property, is subject to the sales tax or use tax; or

(iv) rendered as the result of a transaction that was not initially subject to the sales tax or use tax but that because of the buyer's subsequent use of the services is subject to the sales tax or use tax.

(4) For purposes of this section, the value of property must be determined as of the time of acquisition, introduction into this state, or conversion to use, whichever is latest.

(5) The sale of property or services exempt or nontaxable under [sections 2 through 39] is exempt from the tax imposed in subsections (1) and (3).

(6) Lodging facilities and campgrounds are exempt from the tax imposed in subsections (1)(a) and (3)(a)(i) until October 1, 2003, for contracts entered into prior to [the effective date of this section] that provide for a guaranteed charge for accommodations or campgrounds.

**Section 4. Presumption of taxability — value — rules.** (1) In order to prevent evasion of the sales tax or use tax and to aid in its administration, it is presumed that:

(a) all sales by a person engaging in business are subject to the sales tax or use tax; and

(b) all property bought or sold by any person for delivery into this state is bought or sold for a taxable use within this state.

(2) In determining the amount of use tax due on the use of property or services, it is presumed, in the absence of preponderant evidence of another value, that value means the total amount of property or service or the reasonable value of other consideration paid for the use of the property or service, exclusive of any type of time-price differential. However, in an exchange in which the amount of money paid does not represent the value of the property or service purchased, the use tax must be imposed on the reasonable value of the property or service purchased.

(3) The department shall adopt rules providing for the payment of the sales tax and use tax based on a rounding method.

**Section 5. Separate statement of tax — no advertising to absorb or refund tax — rules.** (1) If a person collects a tax in excess of the tax imposed by [section 3], both the tax and the excess tax must be remitted to the department.

(2) Except as provided in subsection (4), the sales tax must be stated separately for all sales, except for sales from coin-operated or currency-operated machines.

(3) A person may not advertise, hold out, or state to the public or to any customer that the tax imposed by [sections 2 through 39] will be absorbed or refunded.

(4) The department may adopt rules permitting sellers the option of stating sales tax based upon a percentage of taxable sales.

**Section 6. Liability of user for payment of use tax.** (1) A person within this state who uses property is liable to the state for payment of the use tax if the use tax is payable on the value of the property but has not been paid.

(2) The liability imposed by this section is discharged if the buyer has paid the use tax to the seller for payment to the department.

**Section 7. Collection of sales tax and use tax — listing of business locations and agents — severability.** (1) A person engaging in the business of selling property or services subject to taxation under [sections 2 through 39] shall collect the sales tax from the purchaser and pay the sales tax collected to the department.

(2) A person engaging in business within this state shall, before making any sales subject to [sections 2 through 39], obtain a seller's permit, as provided in [section 18], and at the time of making a sale, whether within or outside the state, collect the sales tax imposed by [section 3] from the purchaser and give to the purchaser a receipt, in the manner and form prescribed by rule, for the sales tax paid.

(3) The department may authorize the collection of the sales tax imposed by [section 3] by any retailer who does not maintain a place of business within this state but who, to the satisfaction of the department, is in compliance with the law. When authorized, the person shall collect the use tax upon all property and services that, to the person's knowledge, are for use within this state and subject to taxation under [sections 2 through 39].

(4) All sales tax and use tax required to be collected and all sales tax and use tax collected by any person under [sections 2 through 39] constitute a debt owed to this state by the person required to collect the sales tax and use tax.

(5) A person engaging in business within this state that is subject to [sections 2 through 39] shall provide to the department:

(a) the names and addresses of all of the person's agents operating within this state; and

(b) the location of each of the person's distribution houses or offices, sales houses or offices, and other places of business within this state.

(6) If any application of this section is held invalid, the application to other situations or persons is not affected.

**Section 8. Nontaxable transaction certificate — requirements.** (1) A nontaxable transaction certificate executed by a buyer or lessee must be in the possession of the seller or lessor at the time that a nontaxable transaction occurs.

(2) A nontaxable transaction certificate must contain the information and be in the form prescribed by the department.

(3) Only a buyer or lessee who has registered with the department and whose seller's permit is valid may execute a nontaxable transaction certificate.

(4) If the seller or lessor accepts a nontaxable transaction certificate within the required time and believes in good faith that the buyer or lessee will employ the property or service transferred in a nontaxable manner, the properly executed nontaxable transaction certificate is considered conclusive evidence that the sale is nontaxable.

**Section 9. Nontaxable transaction certificate — form.** (1) The department shall provide for a uniform nontaxable transaction certificate. A



purchaser shall use the certificate when purchasing goods or services for resale or for other nontaxable transactions.

(2) At a minimum, the certificate must provide:

(a) the number of the seller's permit issued to the purchaser as provided in [section 18];

(b) the general character of property or service sold by the purchaser in the regular course of business;

(c) the property or service purchased for resale;

(d) the name and address of the purchaser; and

(e) a signature line for the purchaser.

(3) The department shall adopt rules to provide procedures for application for and provision of a certificate to a person engaging in business within this state prior to [the applicability date of this section]. The rules adopted by the department must ensure that each person engaging in business within this state prior to [the applicability date of this section] that has applied in a timely fashion is issued a certificate prior to [the applicability date of this section].

**Section 10. Exemption — government agencies — exception.** All sales by or uses by the United States or an agency or instrumentality of the United States are exempt from the sales tax and use tax.

**Section 11. Exemption — isolated or occasional sale or lease of property.** The isolated or occasional sale or lease of property by a person that is not regularly engaged in or that does not claim to be engaged in the business of selling or leasing the same or a similar property is exempt from the sales tax and use tax.

**Section 12. Nontaxability — sale of property for resale.** The sale of property is nontaxable if:

(1) the sale is made to a buyer who delivers a nontaxable transaction certificate to the seller;

(2) the buyer resells the property either by itself or in combination with other property; and

(3) the subsequent sale is in the ordinary course of business and the property will be subject to the sales tax.

**Section 13. Nontaxability — sale of service for resale.** The sale of a service for resale is nontaxable if:

(1) the sale is made to a person who delivers a nontaxable transaction certificate;

(2) the buyer resells the service and separately states the value of the service purchased in the charge for the service in the subsequent sale; and

(3) the subsequent sale is in the ordinary course of business and subject to the sales tax.

**Section 14. Nontaxability — lease for subsequent lease.** The lease of property is nontaxable if:

(1) the lease is made to a lessee who delivers a nontaxable transaction certificate; and

(2) the lessee does not use the property in any manner other than for subsequent lease in the ordinary course of business.

**Section 15. Nontaxability — use of property for leasing.** The value of leased property is not considered in computing the use tax due if the person holding the property for lease:

- (1) is engaged in a business that derives a substantial portion of its receipts from leasing or selling property of the type leased;
- (2) does not use the property in any manner other than holding it for lease or sale or leasing or selling it either by itself or in combination with other tangible personal property in the ordinary course of business; and
- (3) does not use the property in a manner incidental to the performance of a service.

**Section 16. Nontaxability — nonprofits.** The sale of property or of a service is nontaxable if the seller is an organization that has a tax-exempt designation under the provisions of section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3), as amended.

**Section 17. Credit — out-of-state taxes.** If a sales, use, or similar tax has been levied by another state or a political subdivision of another state on property that was leased outside this state but that will be used or consumed in this state and the tax was paid by the current user, the amount of tax paid may be credited against any use tax due this state on the same property. The credit may not exceed the sales tax or use tax due this state.

**Section 18. Seller's permit.** (1) A person that wishes to engage in business within this state that is subject to [sections 2 through 39] shall obtain a seller's permit before engaging in business within this state.

(2) Upon an applicant's compliance with [sections 2 through 39], the department shall issue to the applicant a separate, numbered seller's permit for each location in which the applicant maintains an office or other place of business within Montana. A permit is valid until revoked or suspended but is not assignable. A permit is valid only for the person in whose name it is issued and for the transaction of business at the place designated. The permit must be conspicuously displayed at all times at the place for which it is issued.

(3) The department shall adopt rules to provide procedures for application for and provision of a seller's permit to a person engaging in business within this state that is subject to [sections 2 through 39] prior to [the applicability date of this section]. The rules adopted by the department must ensure that each person engaging in business within this state prior to [the applicability date of this section] is issued a seller's permit prior to [the applicability date of this section]. The department may adopt rules providing for seasonal permits.

**Section 19. Permit application — requirements — place of business — form.** (1) (a) A person that wishes to engage in the business of making retail sales or providing services in Montana that are subject to [sections 2 through 39] shall file with the department an application for a permit. If the person has more than one location in which the person maintains an office or other place of business, an application may include multiple locations.

(b) An applicant who does not maintain an office or other place of business and who moves from place to place is considered to have only one place of business and shall attach the permit to the applicant's cart, stand, truck, or other merchandising device.

(2) Each person or class of persons required to file a return under [sections 2 through 39] is required to file an application for a permit.

(3) Each application for a permit must be on a form prescribed by the department and must set forth the name under which the applicant intends to transact business, the location of the applicant's place or places of business, and other information that the department may require. The application must be filed by the owner if the owner is a natural person or by a person authorized to sign the application if the owner is a corporation, partnership, limited liability company, or some other business entity.

**Section 20. Revocation or suspension of permit — appeal.** (1) Subject to the provisions of subsection (2), the department may, for reasonable cause, revoke or suspend any permit held by a person that fails to comply with the provisions of [sections 2 through 39].

(2) The department shall provide dispute resolution on a proposed revocation or suspension pursuant to 15-1-211.

(3) If a permit is revoked, the department may not issue a new permit except upon application accompanied by reasonable evidence of the intention of the applicant to comply with the provisions of [sections 2 through 39]. The department may require security in addition to that authorized by [section 27] in an amount reasonably necessary to ensure compliance with [sections 2 through 39] as a condition for the issuance of a new permit to the applicant.

(4) A person aggrieved by the department's final decision to revoke a permit, as provided in subsection (1), may appeal the decision to the state tax appeal board within 30 days after the date on which the department issued its final decision.

**Section 21. Improper use of subject of purchase obtained with nontaxable transaction certificate — penalty.** (1) If a purchaser that uses a nontaxable transaction certificate uses the subject of the purchase for a purpose other than one allowed as nontaxable under [sections 2 through 39], the use is considered a taxable sale as of the time of first use by the purchaser and the sales price is the price that the purchaser paid. If the sole nonexempt use is rental while holding for sale, the purchaser shall include in the sales price the amount of the rental charged. Upon subsequent sale of the property, the seller shall include the entire amount of the sales price, without deduction of amounts previously received as rentals.

(2) A person that uses a certificate for property that will be used for a purpose other than the purpose claimed is subject to a penalty, payable to the department, of \$100 for each transaction in which an improper use of a certificate has occurred.

(3) Upon a showing of good cause, the department may abate or waive the penalty or a portion of the penalty

**Section 22. Commingling nontaxable certificate goods.** If a purchaser uses a nontaxable transaction certificate with respect to the purchase of fungible goods and commingles these goods with fungible goods that were not purchased with a certificate but that are of such similarity that the identity of the goods in the commingled mass cannot be determined, sales from the mass of commingled goods are considered to be sales of the goods purchased with the certificate until the quantity of commingled goods sold equals the quantity of goods originally purchased under the certificate.

**Section 23. Liability for payment of tax — security for retailer without place of business — penalty.** (1) Liability for the payment of the

sales tax and use tax is not extinguished until the taxes have been paid to the department.

(2) A retailer that does not maintain an office or other place of business within this state is liable for the sales tax or use tax in accordance with [sections 2 through 39] and may be required to furnish adequate security, as provided in [section 27], to ensure collection and payment of the taxes. When authorized and except as otherwise provided in [sections 2 through 39], the retailer is liable for the taxes upon all property sold and services provided in this state in the same manner as a retailer who maintains an office or other place of business within this state. The seller's permit provided for in [section 18] may be canceled at any time if the department considers the security inadequate or believes that the taxes can be collected more effectively in another manner.

(3) An agent, canvasser, or employee of a retailer doing business within this state may not sell, solicit orders for, or deliver any property or services within Montana unless the principal, employer, or retailer possesses a seller's permit issued by the department. If an agent, canvasser, or employee violates the provisions of [sections 2 through 39], the person is subject to a fine of not more than \$100 for each separate transaction or event.

**Section 24. Returns — payment — authority of department.** (1) Except as provided in subsection (2), on or before the last day of the month following the calendar quarter in which the transaction subject to the tax imposed by [sections 2 through 39] occurred, a return, on a form provided by the department, and payment of the tax for the preceding quarter must be filed with the department. Each person engaged in business within this state or using property or services within this state that are subject to tax under [sections 2 through 39] shall file a return. A person making retail sales at two or more places of business shall file a separate return for each separate place of business.

(2) A person who has been issued a seasonal seller's permit shall file a return and pay the tax on the date or dates set by the department.

(3) (a) For the purposes of the sales tax or use tax, a return must be filed by:

(i) a retailer required to collect the tax; and

(ii) a person that:

(A) purchases any items the storage, use, or other consumption of which is subject to the sales tax or use tax; and

(B) has not paid the tax to a retailer required to pay the tax.

(b) Each return must be authenticated by the person filing the return or by the person's agent authorized in writing to file the return.

(4) (a) A person required to collect and pay to the department the taxes imposed by [sections 2 through 39] shall keep records, render statements, make returns, and comply with the provisions of [sections 2 through 39] and the rules prescribed by the department. Each return or statement must include the information required by the rules of the department.

(b) For the purpose of determining compliance with the provisions of [sections 2 through 39], the department is authorized to examine or cause to be examined any books, papers, records, or memoranda relevant to making a determination of the amount of tax due, whether the books, papers, records, or memoranda are the property of or in the possession of the person filing the return or another person. In determining compliance, the department may use

statistical sampling and other sampling techniques consistent with generally accepted auditing standards. The department may also:

- (i) require the attendance of a person having knowledge or information relevant to a return;
  - (ii) compel the production of books, papers, records, or memoranda by the person required to attend;
  - (iii) implement the provisions of 15-1-703 if the department determines that the collection of the tax is or may be jeopardized because of delay;
  - (iv) take testimony on matters material to the determination; and
  - (v) administer oaths or affirmations.
- (5) Pursuant to rules established by the department, returns may be computer-generated and electronically filed.

**Section 25. Credit for taxes paid on worthless accounts — taxes paid if account collected.** (1) Sales taxes paid by a person filing a return under [section 24] on sales found to be worthless and actually deducted by the person as a bad debt for federal income tax purposes may be credited on a subsequent payment of the tax.

(2) Bad debts may be deducted within 12 months after the month in which the bad debt has been charged off for federal income tax purposes. "Charged off for federal income tax purposes" includes the charging off of unpaid balances due on accounts as uncollectible or declaring as uncollectible such unpaid balance due on accounts in the case of a seller who is not required to file federal income tax returns.

(3) If an account is subsequently collected, the sales tax must be paid on the amount collected.

(4) A seller may obtain a refund of tax on any amount of bad debt that exceeds the amount of taxable sales within a 12-month period defined by that bad debt.

(5) For purposes of computing a bad debt deduction or reporting a payment received on a previously claimed bad debt, any payments made on a debt or account are applied first to interest, service charges, and any other charges and second to the price of the property or service and sales tax on the property or service, proportionally.

**Section 26. Vendor allowance.** (1) A person filing a timely return under [section 24] may claim a quarterly vendor allowance for each permitted location in the amount of 5% of the tax determined to be payable to the state, not to exceed \$1,000 a quarter.

(2) The allowance may be deducted on the return.

(3) A person that files a return or payment after the due date for the return or payment may not claim a vendor allowance.

**Section 27. Security — limitations — sale of security deposit at auction — bond.** (1) The department may require a retailer to deposit, with the department, security in a form and amount that the department, by administrative rule, determines is appropriate. The deposit may not be more than twice the estimated average liability for the period for which the return is required to be filed. The amount of security may be increased or decreased by the department, subject to the limitations provided in this section.

(2) (a) If necessary, the department may sell, at public auction, property deposited as security to recover any sales tax or use tax amount required to be collected, including interest and penalties.

(b) Notice of the sale must be served personally upon or sent by certified mail to the person that deposited the security.

(c) After the sale, any surplus above the amount due that is not required as security under this section must be returned to the person that deposited the security.

(3) In lieu of security, the department may require a retailer to file a bond, issued by a surety company authorized to transact business within this state, to guarantee solvency and responsibility.

(4) In addition to the other requirements of this section, the department may require the corporate officers, directors, or shareholders of a corporation to provide a personal guaranty and assumption of liability for the payment of the tax due under [sections 2 through 39].

**Section 28. Examination of return — adjustments — delivery of notices and demands.** (1) If the department determines that the amount of tax due is different from the amount reported, the amount of tax computed on the basis of the examination conducted pursuant to [section 24] constitutes the tax to be paid.

(2) If the tax due exceeds the amount of tax reported as due on the taxpayer's return, the excess must be paid to the department within 30 days after notice of the amount and demand for payment is mailed or delivered to the person making the return unless the taxpayer files a timely objection as provided in 15-1-211. If the amount of the tax found due by the department is less than that reported as due on the return and has been paid, the excess must be credited or, if no tax liability exists or is likely to exist, refunded to the person making the return.

(3) The notice and demand provided for in this section must contain a statement of the computation of the tax and interest and must be sent by mail to the taxpayer at the address given in the taxpayer's return, if any, or to the taxpayer's last-known address.

(4) A taxpayer filing an objection to the demand for payment is subject to and governed by the uniform dispute review procedure provided in 15-1-211.

**Section 29. Penalties and interest for violation.** If a person fails to file a return on or before the due date or fails to pay a tax on or before a due date, the person must be assessed penalty and interest as provided in 15-1-216.

**Section 30. Authority to collect delinquent taxes.** (1) (a) The department shall collect taxes that are delinquent as determined under [sections 2 through 39].

(b) If a tax imposed by [sections 2 through 39] or any portion of the tax is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7.

(2) In addition to any other remedy, in order 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 review of 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.

**Section 31. Interest on deficiency.** Interest accrues on unpaid or delinquent taxes as provided in 15-1-216.

**Section 32. Limitations.** (1) Except in the case of a person that purposely or knowingly, as those terms are defined in 45-2-101, files a false or fraudulent return violating the provisions of [sections 2 through 39], a deficiency may not be assessed or collected with respect to a quarter for which a return is filed unless the notice of additional tax proposed to be assessed is mailed to or personally served upon the taxpayer within 5 years from the date that the return was filed. For purposes of this section, a return filed before the last day prescribed for filing is considered to be filed on the last day.

(2) If, before the expiration of the 5-year period prescribed in subsection (1) for assessment of the tax, the taxpayer consents in writing to an assessment after expiration of the 5-year period, a deficiency may be assessed at any time prior to the expiration of the period to which consent was given.

**Section 33. Refunds — interest — limitations.** (1) A claim for a refund or credit as a result of overpayment of taxes collected under [sections 2 through 39] must be filed within 5 years of the date that the return was due, without regard to any extension of time for filing.

(2) (a) Interest paid by the department on an overpayment must be paid or credited at the same rate as the rate charged on delinquent taxes under 15-1-216.

(b) Except as provided in subsection (2)(c), interest must be paid from the date that the return was due or the date of overpayment, whichever is later. Interest does not accrue during any period in which the processing of a claim is delayed more than 30 days because the taxpayer has not furnished necessary information.

(c) The department is not required to pay interest if:

(i) the overpayment is refunded or credited within 6 months of the date that a claim was filed; or

(ii) the amount of overpayment and interest does not exceed \$1.

**Section 34. Administration — rules.** The department shall:

(1) administer and enforce the provisions of [sections 2 through 39];

(2) cause to be prepared and distributed forms and information that may be necessary to administer the provisions of [sections 2 through 39]; and

(3) adopt rules that may be necessary or appropriate to administer and enforce the provisions of [sections 2 through 39].

**Section 35. Revocation of corporate license — appeal.** (1) If a corporation authorized to do business within this state and required to pay the taxes imposed under [sections 2 through 39] fails to comply with any of the provisions of [sections 2 through 39] or any rule of the department, the department may, for reasonable cause, certify to the secretary of state a copy of an order finding that the corporation has failed to comply with specific statutory provisions or rules.

(2) The secretary of state shall, upon receipt of the certification, revoke the certificate authorizing the corporation to do business within this state and may issue a new certificate only when the corporation has obtained from the department an order finding that the corporation has complied with its obligations under [sections 2 through 39].

(3) An order authorized in this section may not be made until the corporation is given an opportunity for dispute resolution as provided in 15-1-211.

(4) A final decision of the department may be appealed to the state tax appeal board.

**Section 36. Taxpayer quitting business — liability of successor.** (1)

(a) All taxes payable under [sections 2 through 39] are due and payable immediately whenever a taxpayer quits business, sells, exchanges, or otherwise disposes of the business or disposes of the stock of goods.

(b) The taxpayer shall make a return and pay the taxes due within 10 days after the taxpayer quits business, sells, exchanges, or otherwise disposes of the business or disposes of the stock of goods.

(2) Except as provided in subsection (4), a person that becomes a successor is liable for the full amount of the tax and shall withhold from the sales price payable to the taxpayer a sum sufficient to pay any tax due until the taxpayer produces either a receipt from the department showing payment in full of any tax due or a statement from the department that tax is not due.

(3) If a tax is due but has not been paid as provided in subsection (1)(b), the successor is liable for the payment of the full amount of tax. The payment of the tax by the successor is considered to be a payment upon the sales price, and if the payment is greater in amount than the sales price, the amount of the difference becomes a debt due to the successor from the taxpayer owing the tax under subsection (1).

(4) (a) A successor is not liable for any tax due from the person that the successor acquired a business or stock of goods from if:

(i) the successor gives written notice to the department of the acquisition; and

(ii) an assessment is not issued by the department against the former operator of the business within 6 months of receipt of the notice from the successor.

(b) If an assessment is issued by the department, a copy of the assessment must also be mailed to the successor, or if an assessment is not mailed to the successor, the successor is not liable for the tax due.

**Section 37. Tax as debt.** (1) The tax imposed by [sections 2 through 39] and related interest and penalties become a personal debt of the person required to file a return from the time that the liability arises, regardless of when the time for payment of the liability occurs.

(2) (a) This section applies to those corporate officers, directors, or shareholders required by the department to personally guarantee the payment of the taxes for their corporations.

(b) The officer or employee of a corporation whose duty it is to collect, truthfully account for, and pay to the state the amounts imposed by [sections 2 through 39] and who fails to pay the tax is liable to the state for the amounts



imposed by [sections 2 through 39] and the penalty and interest due on the amounts.

**Section 38. Information — confidentiality — agreements with another state.** (1) (a) Except as provided in subsections (2) through (4), it is unlawful for an employee of the department or any other public official or public employee to divulge or otherwise make known information that is disclosed in a report or return required to be filed under [sections 2 through 39] or information that concerns the affairs of the person making the return and that is acquired from the person's records, officers, or employees in an examination or audit.

(b) This section may not be construed to prohibit the department from publishing statistics if they are classified in a way that does not disclose the identity and content of any particular report or return. A person violating the provisions of this section is subject to the penalty provided in 15-30-303 or 15-31-511 for violating the confidentiality of individual income tax or corporation license information.

(2) (a) The department may enter into an agreement with the taxing officials of another state for the interpretation and administration of the laws of their state that provide for the collection of a sales tax or use tax in order to promote fair and equitable administration of the laws and to eliminate double taxation.

(b) In order to implement the provisions of [sections 2 through 39], the department may furnish information on a reciprocal basis to the taxing officials of another state if the information remains confidential under statutes within the state receiving the information that are similar to this section.

(3) In order to facilitate processing of returns and payment of taxes required by [sections 2 through 39], the department may contract with vendors and may disclose data to the vendors. The data disclosed must be administered by the vendor in a manner consistent with this section.

(4) This section may not be construed to limit the investigative authority of the legislative branch, as provided in 5-11-106, 5-12-303, or 5-13-309.

**Section 39. Sales tax and use tax proceeds.** All money collected under [sections 2 through 39] must be deposited by the department into the general fund.

**Section 40. Capital gains credit.** An individual taxpayer is allowed a credit against the taxes imposed by 15-30-103 in an amount equal to 1% of the taxpayer's net capital gains for tax years 2005 and 2006 and 2% of the taxpayer's net capital gains for tax years beginning after 2006, as shown on the taxpayer's individual income tax return filed pursuant to 15-30-142. The credit allowed under this section may not exceed the taxpayer's income tax liability.

**Section 41.** Section 13-37-218, MCA, is amended to read:

**"13-37-218. Limitations on receipts from political committees.** A candidate for the state senate may receive no more than ~~\$1,000~~ \$2,400 in total combined monetary contributions from all political committees contributing to the candidate's campaign, and a candidate for the state house of representatives may receive no more than ~~\$600~~ \$1,400 in total combined monetary contributions from all political committees contributing to the candidate's campaign. The limitations in this section must be multiplied by the inflation factor, as defined in 15-30-101, for the year in which general elections are held. The resulting figure must be rounded off to the nearest \$50 increment. The commissioner shall publish the revised limitations as a rule. In-kind contributions must be included in computing these limitation totals. The limitation provided in this

section does not apply to contributions made by a political party eligible for a primary election under 13-10-601.”

**Section 42.** Section 15-30-101, MCA, is amended to read:

**“15-30-101. Definitions.** For the purpose of this chapter, unless otherwise required by the context, the following definitions apply:

(1) “Base year structure” means the following elements of the income tax structure:

(a) the tax brackets established in 15-30-103, but unadjusted by 15-30-103(2), in effect on June 30 of the taxable year;

(b) the exemptions contained in 15-30-112, but unadjusted by 15-30-112(6), in effect on June 30 of the taxable year;

(c) the maximum standard deduction provided in 15-30-122, but unadjusted by 15-30-122(2), in effect on June 30 of the taxable year.

(2) “Consumer price index” means the consumer price index, United States city average, for all items, *for all urban consumers (CPI-U)*, using the ~~1967~~ *1982-84* base of 100, as published by the bureau of labor statistics of the U.S. department of labor.

(3) “Corporation” or “C. corporation” means a corporation, limited liability company, or other entity:

(a) that is treated as an association for federal income tax purposes;

(b) for which a valid election under section 1362 of the Internal Revenue Code (26 U.S.C. 1362) is not in effect; and

(c) that is not a disregarded entity.

(4) “Department” means the department of revenue.

(5) “Disregarded entity” means a business entity:

(a) that is disregarded as an entity separate from its owner for federal tax purposes, as provided in United States treasury regulations 301.7701-2 or 301.7701-3, 26 CFR 301.7701-2 or 26 CFR 301.7701-3, or as those regulations may be labeled or amended; or

(b) that is a qualified subchapter S. subsidiary that is not treated as a separate corporation, as provided in section 1361(b)(3) of the Internal Revenue Code (26 U.S.C. 1361(b)(3)).

(6) “Dividend” means:

(a) any distribution made by a C. corporation out of its earnings and profits to its shareholders or members, whether in cash or in other property or in stock of the corporation, other than stock dividends; and

(b) any distribution made by an S. corporation treated as a dividend for federal income tax purposes.

(7) “Fiduciary” means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate.

(8) “Foreign government” means any jurisdiction other than the one embraced within the United States, its territories, and its possessions.

(9) “Gross income” means the taxpayer’s gross income for federal income tax purposes as defined in section 61 of the Internal Revenue Code (26 U.S.C. 61) or as that section may be labeled or amended, excluding unemployment

compensation included in federal gross income under the provisions of section 85 of the Internal Revenue Code (26 U.S.C. 85) as amended.

(10) "Inflation factor" means a number determined for each tax year by dividing the consumer price index for June of the tax year by the consumer price index for June ~~1980~~ 2005.

(11) "Information agents" includes all individuals and entities acting in whatever capacity, including lessees or mortgagors of real or personal property, fiduciaries, brokers, real estate brokers, employers, and all officers and employees of the state or of any municipal corporation or political subdivision of the state, having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income with respect to which any person or fiduciary is taxable under this chapter.

(12) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, or as it may be labeled or further amended. References to specific provisions of the Internal Revenue Code mean those provisions as they may be otherwise labeled or further amended.

(13) "Knowingly" is as defined in 45-2-101.

(14) "Limited liability company" means a limited liability company, domestic limited liability company, or a foreign limited liability company as defined in 35-8-102.

(15) "Limited liability partnership" means a limited liability partnership as defined in 35-10-102.

(16) "Lottery winnings" means income paid either in lump sum or in periodic payments to:

- (a) a resident taxpayer on a lottery ticket; or
- (b) a nonresident taxpayer on a lottery ticket purchased in Montana.

(17) (a) "Montana source income" means:

(i) wages, salary, tips, and other compensation for services performed in the state or while a resident of the state;

(ii) gain attributable to the sale or other transfer of tangible property located in the state, sold or otherwise transferred while a resident of the state, or used or held in connection with a trade, business, or occupation carried on in the state;

(iii) gain attributable to the sale or other transfer of intangible property received or accrued while a resident of the state;

(iv) interest received or accrued while a resident of the state or from an installment sale of real property or tangible commercial or business personal property located in the state;

(v) dividends received or accrued while a resident of the state;

(vi) net income or loss derived from a trade, business, profession, or occupation carried on in the state or while a resident of the state;

(vii) net income or loss derived from farming activities carried on in the state or while a resident of the state;

(viii) net rents from real property and tangible personal property located in the state or received or accrued while a resident of the state;

(ix) net royalties from real property and from tangible real property to the extent the property is used in the state or the net royalties are received or accrued while a resident of the state. The extent of use in the state is determined by multiplying the royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the royalty period in the tax year and the denominator of which is the number of days of physical location of the property everywhere during all royalty periods in the tax year. If the physical location is unknown or unascertainable by the taxpayer, the property is considered used in the state in which it was located at the time the person paying the royalty obtained possession.

(x) patent royalties to the extent the person paying them employs the patent in production, fabrication, manufacturing, or other processing in the state, a patented product is produced in the state, or the royalties are received or accrued while a resident of the state;

(xi) net copyright royalties to the extent printing or other publication originates in the state or the royalties are received or accrued while a resident of the state;

(xii) partnership income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit:

(A) derived from a trade, business, occupation, or profession carried on in the state;

(B) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of property located in the state; or

(C) taken into account while a resident of the state;

(xiii) an S. corporation's separately and nonseparately stated income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit:

(A) derived from a trade, business, occupation, or profession carried on in the state;

(B) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of property located in the state; or

(C) taken into account while a resident of the state;

(xiv) social security benefits received or accrued while a resident of the state;

(xv) taxable individual retirement account distributions, annuities, pensions, and other retirement benefits received while a resident of the state; and

(xvi) any other income attributable to the state, including but not limited to lottery winnings, state and federal tax refunds, nonemployee compensation, recapture of tax benefits, and capital loss addbacks.

(b) The term does not include:

(i) compensation for military service of members of the armed services of the United States who are not Montana residents and who are residing in Montana solely by reason of compliance with military orders and does not include income derived from their personal property located in the state except with respect to personal property used in or arising from a trade or business carried on in Montana; or

(ii) interest paid on loans held by out-of-state financial institutions recognized as such in the state of their domicile, secured by mortgages, trust

indentures, or other security interests on real or personal property located in the state, if the loan is originated by a lender doing business in Montana and assigned out-of-state and there is no activity conducted by the out-of-state lender in Montana except periodic inspection of the security.

(18) "Net income" means the adjusted gross income of a taxpayer less the deductions allowed by this chapter.

(19) "Nonresident" means a natural person who is not a resident.

(20) "Paid", for the purposes of the deductions and credits under this chapter, means paid or accrued or paid or incurred, and the terms "paid or accrued" and "paid or incurred" must be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

(21) "Partner" means a member of a partnership or a manager or member of any other entity, if treated as a partner for federal income tax purposes.

(22) "Partnership" means a general or limited partnership, limited liability partnership, limited liability company, or other entity, if treated as a partnership for federal income tax purposes.

(23) "Pass-through entity" means a partnership, an S. corporation, or a disregarded entity.

(24) "Pension and annuity income" means:

(a) systematic payments of a definitely determinable amount from a qualified pension plan, as that term is used in section 401 of the Internal Revenue Code (26 U.S.C. 401), or systematic payments received as the result of contributions made to a qualified pension plan that are paid to the recipient or recipient's beneficiary upon the cessation of employment;

(b) payments received as the result of past service and cessation of employment in the uniformed services of the United States;

(c) lump-sum distributions from pension or profit-sharing plans to the extent that the distributions are included in federal adjusted gross income;

(d) distributions from individual retirement, deferred compensation, and self-employed retirement plans recognized under sections 401 through 408 of the Internal Revenue Code (26 U.S.C. 401 through 408) to the extent that the distributions are not considered to be premature distributions for federal income tax purposes; or

(e) amounts received from fully matured, privately purchased annuity contracts after cessation of regular employment.

(25) "Purposely" is as defined in 45-2-101.

(26) "Received", for the purpose of computation of taxable income under this chapter, means received or accrued, and the term "received or accrued" must be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

(27) "Resident" applies only to natural persons and includes, for the purpose of determining liability to the tax imposed by this chapter with reference to the income of any taxable year, any person domiciled in the state of Montana and any other person who maintains a permanent place of abode within the state even though temporarily absent from the state and who has not established a residence elsewhere.

(28) "S. corporation" means an incorporated entity for which a valid election under section 1362 of the Internal Revenue Code (26 U.S.C. 1362) is in effect.

(29) "Stock dividends" means new stock issued, for surplus or profits capitalized, to shareholders in proportion to their previous holdings.

(30) "Taxable income" means the adjusted gross income of a taxpayer less the deductions and exemptions provided for in this chapter.

(31) ~~"Taxable year" or "tax year"~~ "Tax year" means the taxpayer's taxable year for federal income tax purposes.

(32) "Taxpayer" includes any person, entity, or fiduciary, resident or nonresident, subject to a tax or other obligation imposed by this chapter and unless otherwise specifically provided does not include a C. corporation."

**Section 43.** Section 15-30-103, MCA, is amended to read:

**"15-30-103. Rate of tax.** (1) There ~~shall~~ *must* be levied, collected, and paid for each ~~taxable tax year commencing on or after December 31, 1968,~~ upon the taxable income of ~~every~~ *each* taxpayer subject to this tax, after making allowance for exemptions and deductions as ~~hereinafter~~ *hereinafter* provided ~~in this chapter,~~ a tax on the ~~following~~ brackets of taxable income ~~as follows:~~

- (a) *on the first \$2,300 of taxable income or any part of that income, 1%;*
- (b) *on the next \$1,800 of taxable income or any part of that income, 2%;*
- (c) *on the next \$2,100 of taxable income or any part of that income, 3%;*
- (d) *on the next \$2,200 of taxable income or any part of that income, 4%;*
- (e) *on the next \$2,400 of taxable income or any part of that income, 5%;*
- (f) *on the next \$3,100 of taxable income or any part of that income, 6%;*
- (g) *on any taxable income in excess of \$13,900 or any part of that income, 6.9%.*

~~as adjusted under subsection (2) at the following rates:~~

- ~~(a) on the first \$1,000 of taxable income or any part thereof, 2%;~~
- ~~(b) on the next \$1,000 of taxable income or any part thereof, 3%;~~
- ~~(c) on the next \$2,000 of taxable income or any part thereof, 4%;~~
- ~~(d) on the next \$2,000 of taxable income or any part thereof, 5%;~~
- ~~(e) on the next \$2,000 of taxable income or any part thereof, 6%;~~
- ~~(f) on the next \$2,000 of taxable income or any part thereof, 7%;~~
- ~~(g) on the next \$4,000 of taxable income or any part thereof, 8%;~~
- ~~(h) on the next \$6,000 of taxable income or any part thereof, 9%;~~
- ~~(i) on the next \$15,000 of taxable income or any part thereof, 10%;~~
- ~~(j) on any taxable income in excess of \$35,000 or any part thereof, 11%.~~

(2) ~~By~~ *By* November 1 of each year, the department shall multiply the bracket amount contained in subsection (1) by the inflation factor for that ~~taxable tax year~~ and round the cumulative brackets to the nearest \$100. The resulting adjusted brackets are effective for that ~~taxable tax year~~ and ~~shall must~~ be used as the basis for imposition of the tax in subsection (1) of this section."

**Section 44.** Section 15-30-112, MCA, is amended to read:

**“15-30-112. Exemptions.** (1) Except as provided in subsection (6), in the case of an individual, the exemptions provided by subsections (2) through (5) ~~shall~~ *must* be allowed as deductions in computing taxable income.

(2) (a) An exemption of ~~800~~ *1,900* ~~shall be~~ *is* allowed for ~~taxable years beginning after December 31, 1978, for the taxpayer~~ *all taxpayers*.

(b) An additional exemption of ~~800~~ *1,900* ~~shall be~~ *is* allowed for ~~taxable years beginning after December 31, 1978, for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse, for the calendar year in which the taxable tax year of the taxpayer begins, has no~~ *does not have* gross income and is not the dependent of another taxpayer.

(3) (a) An additional exemption of ~~800~~ *1,900* ~~shall be~~ *is* allowed for ~~taxable years beginning after December 31, 1978, for the taxpayer if he~~ *the taxpayer* has attained the age of 65 before the close of ~~his taxable~~ *the taxpayer's* tax year.

(b) An additional exemption of ~~800~~ *1,900* ~~shall be~~ *is* allowed for ~~taxable years beginning after December 31, 1978, for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse has attained the age of 65 before the close of such taxable~~ *the tax year* and, for the calendar year in which the ~~taxable~~ *tax* year of the taxpayer begins, ~~has no~~ *does not have* gross income and is not the dependent of another taxpayer.

(4) (a) An additional exemption of ~~800~~ *1,900* ~~shall be~~ *is* allowed for ~~taxable years beginning after December 31, 1978, for the taxpayer if he~~ *the taxpayer* is blind at the close of ~~his taxable~~ *the taxpayer's* tax year.

(b) An additional exemption of ~~800~~ *1,900* ~~shall be~~ *is* allowed for ~~taxable years beginning after December 31, 1978, for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse is blind and, for the calendar year in which the taxable tax year of the taxpayer begins, has no~~ *does not have* gross income and is not the dependent of another taxpayer. For the purposes of this subsection (4)(b), the determination of whether the spouse is blind ~~shall~~ *must* be made as of the close of the ~~taxable~~ *tax* year of the taxpayer, except that if the spouse dies during ~~such taxable~~ *the tax year*, ~~such~~ *the* determination ~~shall~~ *must* be made as of the time of ~~such~~ *death*.

(c) For purposes of this subsection (4), an individual is blind only if ~~his~~ *the person's* central visual acuity does not exceed 20/200 in the better eye with correcting lenses or if ~~his~~ *visual* acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision ~~such~~ *to an extent* that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(5) (a) An exemption of ~~800~~ *1,900* ~~shall be~~ *is* allowed for ~~taxable years beginning after December 31, 1978, for~~ *each dependent*:

(i) whose gross income for the calendar year in which the ~~taxable~~ *tax* year of the taxpayer begins is less than \$800; or

(ii) who is a child of the taxpayer and who:

(A) has not attained the age of 19 years at the close of the calendar year in which the ~~taxable~~ *tax* year of the taxpayer begins; or

(B) is a student.

(b) ~~No~~ *An* exemption ~~shall be~~ *is not* allowed under this subsection for ~~any~~ *a* dependent who has made a joint return with ~~his~~ *the dependent's* spouse for the ~~taxable~~ *tax* year beginning in the calendar year in which the ~~taxable~~ *tax* year of the taxpayer begins.

(c) For purposes of subsection (5)(a)(ii), the term "child" means an individual who is a son, stepson, daughter, or stepdaughter of the taxpayer.

(d) For purposes of subsection (5)(a)(ii)(B), the term "student" means an individual who, during each of 5 calendar months during the calendar year in which the ~~taxable~~ tax year of the taxpayer begins:

(i) is a full-time student at an educational institution; or

(ii) is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational institution or of a state or political subdivision of a state. For purposes of this subsection (5)(d)(ii), the term "educational institution" means only an educational institution ~~which~~ *that* normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on.

(6) The department, by November 1 of each year, shall multiply all the exemptions provided in this section by the inflation factor for that ~~taxable~~ tax year and round the product to the nearest \$10. The resulting adjusted exemptions are effective for that ~~taxable~~ tax year and ~~shall~~ *must* be used in calculating the tax imposed in 15-30-103."

**Section 45.** Section 15-30-121, MCA, is amended to read:

**"15-30-121. Deductions allowed in computing net income.** (1) In computing net income, there are allowed as deductions:

(a) the items referred to in sections 161, including the contributions referred to in 33-15-201(5)(b), and 211 of the Internal Revenue Code of 1954 (26 U.S.C. 161 and 211), or as sections 161 and 211 are labeled or amended, subject to the following exceptions, which are not deductible:

(i) items provided for in 15-30-123;

(ii) state income tax paid;

(iii) premium payments for medical care as provided in subsection (1)(g)(i);

(iv) long-term care insurance premium payments as provided in subsection (1)(g)(ii);

(b) federal income tax paid within the tax year, *not to exceed \$5,000 for each taxpayer filing singly, head of household, or married filing separately or \$10,000 if married and filing jointly;*

(c) expenses of household and dependent care services as outlined in subsections (1)(c)(i) through (1)(c)(iii) and (2) and subject to the limitations and rules as set out in subsections (1)(c)(iv) through (1)(c)(vi), as follows:

(i) expenses for household and dependent care services necessary for gainful employment incurred for:

(A) a dependent under 15 years of age for whom an exemption can be claimed;

(B) a dependent as allowable under 15-30-112(5), except that the limitations for age and gross income do not apply, who is unable to provide self-care because of physical or mental illness; and

(C) a spouse who is unable to provide self-care because of physical or mental illness;



(ii) employment-related expenses incurred for the following services, but only if the expenses are incurred to enable the taxpayer to be gainfully employed:

(A) household services that are attributable to the care of the qualifying individual; and

(B) care of an individual who qualifies under subsection (1)(c)(i);

(iii) expenses incurred in maintaining a household if over half of the cost of maintaining the household is furnished by an individual or, if the individual is married during the applicable period, is furnished by the individual and the individual's spouse;

(iv) the amounts deductible in subsections (1)(c)(i) through (1)(c)(iii), subject to the following limitations:

(A) a deduction is allowed under subsection (1)(c)(i) for employment-related expenses incurred during the year only to the extent that the expenses do not exceed \$4,800;

(B) expenses for services in the household are deductible under subsection (1)(c)(i) for employment-related expenses only if they are incurred for services in the taxpayer's household, except that employment-related expenses incurred for services outside the taxpayer's household are deductible, but only if incurred for the care of a qualifying individual described in subsection (1)(c)(i)(A) and only to the extent that the expenses incurred during the year do not exceed:

(I) \$2,400 in the case of one qualifying individual;

(II) \$3,600 in the case of two qualifying individuals; and

(III) \$4,800 in the case of three or more qualifying individuals;

(v) if the combined adjusted gross income of the taxpayers exceeds \$18,000 for the tax year during which the expenses are incurred, the amount of the employment-related expenses incurred, to be reduced by one-half of the excess of the combined adjusted gross income over \$18,000;

(vi) for purposes of this subsection (1)(c):

(A) married couples shall file a joint return or file separately on the same form;

(B) if the taxpayer is married during any period of the tax year, employment-related expenses incurred are deductible only if:

(I) both spouses are gainfully employed, in which case the expenses are deductible only to the extent that they are a direct result of the employment; or

(II) the spouse is a qualifying individual described in subsection (1)(c)(i)(C);

(C) an individual legally separated from the individual's spouse under a decree of divorce or of separate maintenance may not be considered as married;

(D) the deduction for employment-related expenses must be divided equally between the spouses when filing separately on the same form;

(E) payment made to a child of the taxpayer who is under 19 years of age at the close of the tax year and payments made to an individual with respect to whom a deduction is allowable under 15-30-112(5) are not deductible as employment-related expenses;

(d) in the case of an individual, political contributions determined in accordance with the provisions of section 218(a) and (b) of the Internal Revenue

Code (now repealed) that were in effect for the tax year ended December 31, 1978;

(e) that portion of expenses for organic fertilizer and inorganic fertilizer produced as a byproduct allowed as a deduction under 15-32-303 that was not otherwise deducted in computing taxable income;

(f) contributions to the child abuse and neglect prevention program provided for in 52-7-101, subject to the conditions set forth in 15-30-156;

(g) the entire amount of premium payments made by the taxpayer, except premiums deducted in determining Montana adjusted gross income, or for which a credit was claimed under 15-30-128, for:

(i) insurance for medical care, as defined in 26 U.S.C. 213(d), for coverage of the taxpayer, the taxpayer's dependents, and the parents and grandparents of the taxpayer; and

(ii) long-term care insurance policies or certificates that provide coverage primarily for any qualified long-term care services, as defined in 26 U.S.C. 7702B(c), for:

(A) the benefit of the taxpayer for tax years beginning after December 31, 1994; or

(B) the benefit of the taxpayer, the taxpayer's dependents, and the parents and grandparents of the taxpayer for tax years beginning after December 31, 1996;

(h) light vehicle registration fees, as provided for in 61-3-560 through 61-3-562, paid during the tax year; and

(i) per capita livestock fees imposed pursuant to 15-24-921, 15-24-922, 81-6-104, 81-6-204, 81-6-209, 81-7-118, or 81-7-201.

(2) (a) Subject to the conditions of subsection (1)(c), a taxpayer who operates a family day-care home or a group day-care home, as these terms are defined in 52-2-703, and who cares for the taxpayer's own child and at least one unrelated child in the ordinary course of business may deduct employment-related expenses considered to have been paid for the care of the child.

(b) The amount of employment-related expenses considered to have been paid by the taxpayer is equal to the amount that the taxpayer charges for the care of a child of the same age for the same number of hours of care. The employment-related expenses apply regardless of whether any expenses actually have been paid. Employment-related expenses may not exceed the amounts specified in subsection (1)(c)(iv)(B).

(c) Only a day-care operator who is licensed and registered as required in 52-2-721 is allowed the deduction under this subsection (2)."

**Section 46.** Section 15-30-122, MCA, is amended to read:

**"15-30-122. Standard deduction.** (1) A standard deduction equal to 20% of adjusted gross income is allowed if elected by the taxpayer on a return. The standard deduction is in lieu of all deductions allowed under 15-30-121. The minimum standard deduction is ~~\$665~~ \$1,580, as adjusted under the provisions of subsection (2), or 20% of adjusted gross income, whichever is greater, to a maximum standard deduction of ~~\$1,500~~ \$3,560, as adjusted under the provisions of subsection (2). However, in the case of a single joint return of husband and wife or in the case of a single individual who qualifies to file as a head of household on the federal income tax return, the minimum standard

deduction is ~~\$1,330~~ *twice the amount of the minimum standard deduction for a single return*, as adjusted under the provisions of subsection (2), or 20% of adjusted gross income, whichever is greater, to a maximum standard deduction of ~~\$3,000~~ *twice the amount of the maximum standard deduction for a single return*, as adjusted under the provisions of subsection (2). The standard deduction may not be allowed to either the husband or the wife if the tax of one of the spouses is determined without regard to the standard deduction. For purposes of this section, the determination of whether an individual is married must be made as of the last day of the tax year unless one of the spouses dies during the tax year, in which case the determination must be made as of the date of death.

(2) By November 1 of each year, the department shall multiply both the minimum and the maximum standard deduction for single returns by the inflation factor for that tax year and round the product to the nearest \$10. ~~The minimum and maximum standard deduction for joint returns and qualified head of household returns must be twice the amount of the minimum and maximum standard deduction for single returns.~~ The resulting adjusted deductions are effective for that tax year and must be used in calculating the tax imposed in 15-30-103."

**Section 47.** Section 15-30-124, MCA, is amended to read:

**"15-30-124. Credit allowed resident taxpayers for income taxes imposed by foreign states or countries.** (1) Subject to the conditions provided in subsections (2) through (5), a resident of this state is allowed a credit against the taxes imposed by this chapter for:

(a) income taxes imposed by and paid to another state or country on income taxable under this chapter; ~~and~~

(b) the resident's pro rata share of any income tax imposed by and paid to another state or country by an S. corporation of which the resident is a shareholder; *and*

(c) *the resident's distributive share, whether separately or nonseparately stated, of any income tax imposed by and paid to another state or country by a partnership of which the resident is a partner.*

(2) The credit is allowed only for taxes paid to another state or country on income derived from sources within the other state or country that is taxable under the laws of the other state or country regardless of the residence or domicile of the taxpayer.

(3) The credit is not allowed if the other state or country allows residents of this state a credit against the taxes imposed by the other state or country for taxes paid or payable under this chapter.

(4) The allowable credit must be computed by a formula prescribed by the department.

(5) For the purposes of the credit under ~~subsection~~ *subsections (1)(b) and (1)(c)*:

(a) "income tax" has the same meaning as provided in Article II of 15-1-601;

(b) the S. corporation must have made and have in effect on the last day of its tax year a valid election under subchapter S. of Chapter 1 of the Internal Revenue Code; and

(c) the credit applies only to taxes paid by the S. corporation or partnership on income taxable under this chapter.”

**Section 48.** Section 15-30-142, MCA, is amended to read:

**“15-30-142. Returns and payment of tax — penalty and interest — refunds — credits.** (1) For both resident and nonresident taxpayers, each single individual and each married individual not filing a joint return with a spouse and having a gross income for the tax year of more than ~~\$1,500~~ \$3,560, as adjusted under the provisions of subsection (7), and married individuals not filing separate returns and having a combined gross income for the tax year of more than ~~\$3,000~~ \$7,120, as adjusted under the provisions of subsection (7), are liable for a return to be filed on forms and according to rules that the department may prescribe. The gross income amounts referred to in the preceding sentence must be increased by ~~\$800~~ \$1,900, as adjusted under the provisions of 15-30-112(6), for each additional personal exemption allowance that the taxpayer is entitled to claim for the taxpayer and the taxpayer’s spouse under 15-30-112(3) and (4).

(2) In accordance with instructions set forth by the department, each taxpayer who is married and living with husband or wife and is required to file a return may, at the taxpayer’s option, file a joint return with husband or wife even though one of the spouses has neither gross income nor deductions. If a joint return is made, the tax must be computed on the aggregate taxable income and the liability with respect to the tax is joint and several. If a joint return has been filed for a tax year, the spouses may not file separate returns after the time for filing the return of either has expired unless the department consents.

(3) If a taxpayer is unable to make the taxpayer’s own return, the return must be made by an authorized agent or by a guardian or other person charged with the care of the person or property of the taxpayer.

(4) All taxpayers, including but not limited to those subject to the provisions of 15-30-202 and 15-30-241, shall compute the amount of income tax payable and shall, at the time of filing the return required by this chapter, pay to the department any balance of income tax remaining unpaid after crediting the amount withheld, as provided by 15-30-202, and any payment made by reason of an estimated tax return provided for in 15-30-241. However, the tax computed must be greater by \$1 than the amount withheld and paid by estimated return as provided in this chapter. If the amount of tax withheld and the payment of estimated tax exceed by more than \$1 the amount of income tax as computed, the taxpayer is entitled to a refund of the excess.

(5) As soon as practicable after the return is filed, the department shall examine and verify the tax.

(6) If the amount of tax as verified is greater than the amount paid, the excess must be paid by the taxpayer to the department within 60 days after notice of the amount of the tax as computed, with interest added as provided in 15-1-216. In that case, there may not be a penalty because of the understatement if the deficiency is paid within 60 days after the first notice of the amount is mailed to the taxpayer.

(7) By November 1 of each year, the department shall multiply the minimum amount of gross income necessitating the filing of a return by the inflation factor for the tax year. These adjusted amounts are effective for that tax year, and persons who have gross incomes less than these adjusted amounts are not required to file a return.

(8) Individual income tax forms distributed by the department for each tax year must contain instructions and tables based on the adjusted base year structure for that tax year.”

**Section 49.** Section 16-11-111, MCA, is amended to read:

**“16-11-111. Cigarette sales tax — exemption for sale to tribal member.** (1) (a) A tax on the purchase of cigarettes for consumption, use, or any purpose other than resale in the regular course of business is imposed and must be precollected by the wholesaler and paid to the state of Montana. The tax is ~~18~~ 70 cents on each package containing 20 cigarettes. ~~and, when~~ Whenever packages contain other than 20 cigarettes, *there is* a tax on each cigarette equal to 1/20th the tax on a package containing 20 cigarettes.

(b) The tax computed under subsection (1)(a) applies to illegally packaged cigarettes under 16-11-307.

(2) The tax imposed in subsection (1) does not apply to quota cigarettes.

(3) Subject to the refund or credit provided in subsection (4), the tax must be precollected on all cigarettes entering a Montana Indian reservation.

(4) Pursuant to the procedure provided in subsection (5), a wholesaler making a sale of cigarettes to a retailer within the boundaries of a Montana Indian reservation may apply to the department for a refund or credit for taxes precollected on cigarettes sold by the retailer to a member of the federally recognized Indian tribe or tribes on whose reservation the sale is made. A wholesaler who does not file a claim within 1 year of the shipment date forfeits the refund or credit.

(5) The distribution of tax-free cigarettes to a tribal member must be implemented through a system of preapproved wholesaler shipments. A licensed Montana wholesaler shall contact the department for approval prior to the shipment of the untaxed cigarettes. The department may authorize sales based on whether the quota, as established in a cooperative agreement between the department and an Indian tribe or as set out in this chapter, has been met. If authorized as a tax-exempt sale, the wholesaler, upon providing proof of order and delivery to a retailer within the boundaries of a Montana Indian reservation selling cigarettes to members of a federally recognized tribe or tribes of that reservation, must be given a ~~credit or~~ refund or *credit*. Once the quota has been filled, the department shall immediately notify all affected wholesalers that further sales on that reservation must be taxed and that a claim for a refund or credit will not be honored for the remainder of the quota period. Quota allocations are not transferable between quota periods or between reservations.

(6) The total amount of refunds or credits allowed by the department to all wholesalers claiming the refund or credit under subsection (4) for any month may not exceed an amount that is equal to the tax due on the quota allocation. The department shall determine the amount of refunds or credits for each Indian reservation at the beginning of each fiscal year, using the most recent census data available from the bureau of Indian affairs or as provided in a cooperative agreement with the tribe or tribes of the Indian reservation.”

**Section 50.** Section 16-11-114, MCA, is amended to read:

**“16-11-114. Insignia discount.** Each licensed wholesaler is entitled to purchase an insignia at full face value less the following percentage of the face value upon payment for the insignia as defrayment of the costs of affixing insignia and precollecting the tax on behalf of the state of Montana:

- (1) ~~6%~~ 1.66% for the first 2,580 cartons or portion thereof of 2,580 cartons purchased in any calendar month;
- (2) ~~4%~~ 1.11% for the next 2,580 cartons or portion thereof of 2,580 cartons purchased in any calendar month; and
- (3) ~~3%~~ 0.83% for purchases in excess of 5,160 cartons in any calendar month.”

**Section 51.** Section 16-11-119, MCA, is amended to read:

**“16-11-119. Disposition of taxes.** (1) Cigarette taxes collected under the provisions of 16-11-111 must, in accordance with the provisions of 15-1-501, be ~~allocated~~ deposited as follows:

~~(1)(a) The amount of 11.11% of the cigarette tax collected on each package of cigarettes must be deposited~~ 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;:

~~(2) The amount of 73.04% must, in accordance with the provisions of 15-1-501, be deposited in the state general fund.~~

~~(3)(b) The amount of 15.85% must, in accordance with the provisions of 15-1-501, be deposited~~ 4.3% in the long-range building program account provided for in 17-7-205; and

(c) the remainder to the state general fund.

(2) 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.”

**Section 52.** Section 16-11-201, MCA, is amended to read:

**“16-11-201. Definitions.** As used in this part, the following definitions apply, unless the context requires otherwise:

(1) “Moist snuff” means any finely cut, ground, or powdered tobacco, other than dry snuff, that is intended to be placed in the oral cavity.

(2) “Retailer” means any person other than a wholesaler who is engaged in the business of selling tobacco products to the ultimate consumer.

~~(2)~~(3) “Sale” or “sell” means any transfer of tobacco products for a consideration, exchange, barter, gift, offer for sale, or distribution, in any manner or by any means.

~~(3)~~(4) “Tobacco product” means a substance other than cigarettes that is intended for human consumption and that contains tobacco.

~~(4)~~(5) “Wholesale price” means the established price for which a manufacturer sells a tobacco product to a wholesaler or any other person before any discount or other reduction.

~~(5)~~(6) “Wholesaler” means any person who purchases tobacco products directly from the manufacturer or from any other person who purchases from the manufacturer and who acquires the products for sale to retail dealers.”

**Section 53.** Section 16-11-202, MCA, is amended to read:

**“16-11-202. Tax on sale of tobacco other than cigarettes — imposed on retail consumer — rate of tax.** (1) All taxes paid pursuant to the provisions of this section are considered to be direct taxes on the retail

consumer, precollected for the purpose of convenience and facility only. When the tax is paid by any other person, the payment is considered as an advance payment and must be added to the price of tobacco products and recovered from the ultimate consumer or user. ~~Any~~ A person selling tobacco products at retail shall state or separately display in the premises where the products are sold a notice of the tax included in the selling price and charged or payable pursuant to this section. The provisions of this section do not affect the method of collection of the tax as provided in this part.

(2) There must be collected and paid to the state of Montana a tax of ~~12 1/2%~~ 25% of the wholesale price, *to the wholesaler*, of all tobacco products, *other than moist snuff to the wholesaler*. *The tax on moist snuff is 35 cents an ounce based upon the net weight of the package listed by the manufacturer. For packages of moist snuff that are less than or greater than 1 ounce, the tax must be proportional to the size of the package.* Tobacco products shipped from Montana and destined for retail sale and consumption outside the state are not subject to this tax.”

**Section 54.** Section 16-11-206, MCA, is amended to read:

**“16-11-206. Wholesaler’s discount — disposition of taxes.** The taxes specified in this part that are paid by the wholesaler must be paid to the department in full less a ~~5%~~ 2.5% defrayment for the wholesaler’s collection and administrative expense and must, in accordance with the provisions of 15-1-501, be deposited by the department in the state general fund. Refunds of the tax paid must be made as provided in 15-1-503 in cases in which the tobacco products purchased become unsalable.”

**Section 55. Transition.** (1) On or before June 30, 2003, each cigarette wholesale dealer, retail dealer, and vending machine operator shall file a report with the department of revenue in the form prescribed by the department showing the number of stamped cigarettes and cigarette tax insignia on hand at 12:01 a.m. on April 30, 2003.

(2) Accompanying the report filed pursuant to subsection (1), each cigarette wholesale dealer, retail dealer, and vending machine operator shall pay the difference in tax between the former tax rate and the new tax rate on that portion of inventory of cigarettes and cigarette tax insignia subject to [this act] held by the dealer or operator at 12:01 a.m. on April 30, 2003, that exceeds the number of stamped cigarettes and cigarette tax insignia held in inventory by the cigarette wholesale dealer, retail dealer, or vending machine operator at the close of its most recently concluded income tax reporting year.

**Section 56. 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 band of Chippewa.

**Section 57. Codification instruction.** (1) [Section 1] is not intended to be codified.

(2) [Sections 2 through 39] are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 2 through 39].

(3) [Section 40] is intended to be codified as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to [section 40].

**Section 58. Coordination instruction.** If Senate Bill No. 470 is passed and approved, then [sections 40 through 46 and 48 of this act] are void.

**Section 59. 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 60. 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 61. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Sections 40 through 46 and 48] are effective January 1, 2005.

**Section 62. Applicability.** (1) [This act] applies to the sale of the following goods and services:

(a) cigarette and tobacco products sold on or after May 1, 2003;

(b) accommodation and campground charges under [section 3(1)(b) and (3)(a)(ii)] made on or after June 1, 2003; and

(c) base rental charges for rental vehicles under [section 3(1)(c) and (3)(a)(iii)] made on or after July 1, 2003.

(2) [Sections 40 and 42 through 45] apply to tax years beginning after December 31, 2004.

(3) [Section 47] applies retroactively, within the meaning of 1-2-109, to years beginning after December 31, 2002.

Approved April 30, 2003

## CHAPTER NO. 545

[SB 408]

AN ACT PROVIDING AN ADJUSTMENT TO ADJUSTED GROSS INCOME FOR STATE INCOME TAX PURPOSES FOR LICENSED HEALTH CARE PROFESSIONALS WHO RECEIVE A LOAN REPAYMENT INCENTIVE TO PRACTICE IN CERTAIN AREAS IN MONTANA; AMENDING SECTION 15-30-111, 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 15-30-111, MCA, is amended to read:

**“15-30-111. (Temporary) Adjusted gross income.** (1) Adjusted gross income is the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954, 26 U.S.C. 62, as that section may be labeled or amended, 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 of 1986, 26 U.S.C. 852(b)(5), as that section may be amended or renumbered, 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;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code of 1954 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(15);

(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; and

(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.

(2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954, as labeled or amended, 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, a county, municipality, or 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 of 1986, 26 U.S.C. 852(b)(5), as that section may be amended or renumbered, 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), the first \$3,600 of all pension and annuity income received as defined in 15-30-101;

(ii) 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 \$30,000 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 \$30,000 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

persons for services rendered by them 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 withdrawn from a family education savings account or earnings withdrawn from a family education savings account 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 15-30-603, deposited in a Montana farm and ranch risk management account, as provided in 15-30-601 through 15-30-605, in any tax year for which a deduction is not provided for federal income tax purposes; and

(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 15-30-142.

(3) A shareholder of a DISC that is exempt from the corporation license 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 of 1954, as those sections may be labeled or amended, 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) 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 and before application of the two-earner married couple deduction 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.

(7) Married taxpayers who file a joint federal return and who make an election on the federal return to defer income ratably for 4 tax years because of a conversion from an IRA other than a Roth IRA to a Roth IRA, pursuant to section 408A(d)(3) of the Internal Revenue Code, 26 U.S.C. 408A(d)(3), may file separate Montana income tax returns to defer the full taxable conversion amount from Montana adjusted gross income for the same time period. The deferred amount must be attributed to the taxpayer making the conversion.

(8) An individual who contributes to one or more accounts established under the Montana family education savings program 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, as defined in 15-62-103, 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. <eff>

(9) (a) A taxpayer may exclude the amount of the loan payment received pursuant to subsection (9)(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 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 (9)(b) as an incentive to practice in Montana.

(b) For the purposes of subsection (9)(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. (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.)

**15-30-111. (Effective on occurrence of contingency) Adjusted gross income.** (1) Adjusted gross income is the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954, 26 U.S.C. 62, as that section may be labeled or amended, 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 of 1986, 26 U.S.C. 852(b)(5), as that section may be amended or renumbered, 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;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code of 1954 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(15);

(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; and

(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.

(2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954, as labeled or amended, 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, a county, municipality, or 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 of 1986, 26 U.S.C. 852(b)(5), as that section may be amended or renumbered, 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), the first \$3,600 of all pension and annuity income received as defined in 15-30-101;

(ii) 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 \$30,000 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 \$30,000 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 persons for services rendered by them 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 withdrawn from a family education savings account or earnings withdrawn from a family education savings account 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 15-30-603, deposited in a Montana farm and ranch risk management account, as provided in 15-30-601 through 15-30-605, 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 15-30-142.

(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.

(3) A shareholder of a DISC that is exempt from the corporation license 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 of 1954, as those sections may be labeled or amended, 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) 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 and before application of the two-earner married couple deduction 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.

(7) Married taxpayers who file a joint federal return and who make an election on the federal return to defer income ratably for 4 tax years because of a conversion from an IRA other than a Roth IRA to a Roth IRA, pursuant to section 408A(d)(3) of the Internal Revenue Code, 26 U.S.C. 408A(d)(3), may file separate Montana income tax returns to defer the full taxable conversion

amount from Montana adjusted gross income for the same time period. The deferred amount must be attributed to the taxpayer making the conversion.

(8) An individual who contributes to one or more accounts established under the Montana family education savings program 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, as defined in 15-62-103, 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.

(9) (a) A taxpayer may exclude up to \$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 made on the taxpayer's behalf by a loan repayment program described in subsection (9)(b) as an incentive to practice in Montana.

(b) For the purposes of subsection (9)(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. (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.)”

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

**Section 3. Applicability.** [This act] applies to tax years beginning after December 31, 2002.

Approved April 30, 2003

## CHAPTER NO. 546

[SB 429]

AN ACT GENERALLY REVISING THE PROVISIONS REGARDING REDISTRICTING; PROVIDING FOR CRITERIA; PROVIDING FOR THE USE OF DECENNIAL CENSUS DATA; PROVIDING FOR THE IMPLEMENTATION OF A SUCCESSFUL CONSTITUTIONAL AMENDMENT TO REVISE LEGISLATIVE REDISTRICTING TO CREATE A NONPARTISAN PROCESS TO ALLOW THE LEGISLATURE

OPPORTUNITIES TO APPROVE A PLAN; PROVIDING THAT IF A PLAN IS NOT APPROVED, A THREE-JUDGE PANEL APPOINTED BY THE SUPREME COURT SHALL APPROVE A PLAN; PROVIDING FOR A REDISTRICTING PLAN UPON ORDER BY THE COURT; AMENDING SECTION 1, CHAPTER 4, LAWS OF 2003, AND SECTIONS 5-1-101, 5-1-102, 5-1-106, 5-1-108, 5-1-109, AND 5-1-111, MCA; REPEALING SECTION 5-1-110, MCA; CONTINGENTLY REPEALING CHAPTER 3, LAWS OF 2003; AND PROVIDING AN APPLICABILITY DATE.

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

**Section 1. Redistricting criteria.** (1) Subject to federal law, legislative and congressional districts must be established on the basis of population.

(2) In the development of legislative districts, a plan is subject to the Voting Rights Act and must comply with the following criteria, in order of importance:

(a) The districts must be as equal as practicable, meaning to the greatest extent possible, within a plus or minus 1% relative deviation from the ideal population of a district as calculated from information provided by the federal decennial census. The relative deviation may be exceeded only when necessary to keep political subdivisions intact or to comply with the Voting Rights Act.

(b) District boundaries must coincide with the boundaries of political subdivisions of the state to the greatest extent possible. The number of counties and cities divided among more than one district must be as small as possible. When there is a choice between dividing local political subdivisions, the more populous subdivisions must be divided before the less populous, unless the boundary is drawn along a county line that passes through a city.

(c) The districts must be contiguous, meaning that the district must be in one piece. Areas that meet only at points of adjoining corners or areas separated by geographical boundaries or artificial barriers that prevent transportation within a district may not be considered contiguous.

(d) The districts must be compact, meaning that the compactness of a district is greatest when the length of the district and the width of a district are equal. A district may not have an average length greater than three times the average width unless necessary to comply with the Voting Rights Act.

(3) A district may not be drawn for the purposes of favoring a political party or an incumbent legislator or member of congress. The following data or information may not be considered in the development of a plan:

- (a) addresses of incumbent legislators or members of congress;
- (b) political affiliations of registered voters;
- (c) partisan political voter lists; or
- (d) previous election results, unless required as a remedy by a court.

**Section 2.** Section 5-1-101, MCA, is amended to read:

**“5-1-101. Commission to redistrict and reapportion — number of legislators.** (1) In each session preceding each federal population census, a commission of ~~five~~ citizens, none of whom may be public officials, shall be selected *as provided in 5-1-102* to prepare the plans for redistricting and reapportioning the state into legislative and congressional districts.

(2) The plans for redistricting and reapportionment of legislative districts must be based on the number of members in the house of representatives and the senate to be determined in the legislative session before the census.”



**Section 3.** Section 5-1-102, MCA, is amended to read:

**“5-1-102. Composition of commission.** (1) The majority and minority leaders of each house shall each designate one commissioner. A commissioner must be appointed from each district listed in subsection (2). The majority leader in the senate has first choice of the district from which the majority leader will select a commissioner, and the majority leader of the house has second choice. Within 20 days after their designation, the four commissioners ~~shall~~ may select ~~the~~ a fifth member, who, *if selected*, shall serve as the presiding officer of the commission. If the four members fail to select the fifth member within the time prescribed, ~~a majority of the supreme court shall select the fifth member~~ *the commission is composed of the four designated commissioners, who may alternate as presiding officer.*

(2) The commission districts are the following counties:

(a) District 1: Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, and Ravalli;

(b) District 2: Lewis and Clark, Powell, Granite, Deer Lodge, Silver Bow, Jefferson, Broadwater, Meagher, Beaverhead, Madison, Gallatin, and Park;

(c) District 3: Glacier, Toole, Liberty, Hill, Blaine, Phillips, Valley, Daniels, Sheridan, Roosevelt, Richland, McCone, Garfield, Petroleum, Fergus, Judith Basin, Cascade, Chouteau, Teton, and Pondera; and

(d) District 4: Wheatland, Golden Valley, Musselshell, Treasure, Rosebud, Custer, Prairie, Dawson, Wibaux, Fallon, Carter, Powder River, Big Horn, Yellowstone, Carbon, Stillwater, and Sweet Grass.”

**Section 4.** Section 5-1-106, MCA, is amended to read:

**“5-1-106. Legislative services division to provide technical and clerical services.** (1) The executive director of the legislative services division, under the direction of the commission, shall provide the technical staff and clerical services that the commission, *the legislature, or the panel provided for in 5-1-109* needs to prepare ~~its~~ districting and apportionment plans.

(2) *The legislative services division shall obtain from the United States bureau of the census the population data needed for redistricting that the census bureau is required to provide this state under Public Law 94-171.*

(3) *The legislative services division shall gather information from interested parties in each of the regions and develop alternative plans for consideration by the commission. The commission shall select a plan to be presented for consideration at the regional public hearings.”*

**Section 5.** Section 5-1-108, MCA, is amended to read:

**“5-1-108. Public hearing hearings on plans.** (1) Before the commission files its final congressional redistricting plan with the secretary of state, the commission shall hold at least one public hearing on it.

(2) Before the commission submits its legislative redistricting plan to the legislature, it shall hold at least *four regional public hearings on a tentative plan* and one public hearing on the *entire* plan at the state capitol. *The commission shall hold the final public hearing at least 15 days but not more than 30 days prior to its submission to the legislature.*

~~(3) The commission may hold other hearings as it deems necessary.”~~

**Section 6.** Section 5-1-109, MCA, is amended to read:

**“5-1-109. Submission of plan for legislative redistricting to legislature — legislative action — judicial panel.** (1) The commission shall submit ~~its~~ a nonpartisan legislative redistricting plan, including a recommendation for assignment of holdover senators, to the legislature by the 10th legislative day of the first regular session after its appointment or after the census figures are available.

(2) *Within 15 legislative days after submission, the legislature shall consider the legislative redistricting plan, including assignment of holdover senators, for approval by resolution without amendment, unless purely corrective in nature. If the plan is approved, it must be submitted to the secretary of state and it becomes law. If the plan is not approved, then the legislature shall direct the legislative services division to prepare a second nonpartisan plan based on information transmitted by both houses. Both houses shall specify the concerns to be addressed, if any, in the second plan, and the legislative services division shall issue a report stating how each concern was addressed or not addressed and the reasons for the action taken regarding each concern. The legislative services division shall prepare the second plan within time constraints that will allow both houses of the legislature sufficient time to take action on the plan within 21 legislative days of the first plan's rejection.*

(3) *If the second plan is approved, it must be submitted to the secretary of state and it becomes law. If the second plan is not approved, then the legislature shall direct the legislative services division to prepare a third nonpartisan plan based on information transmitted by both houses. Both houses shall specify the concerns to be addressed, if any, in the third plan, and the legislative services division shall issue a report stating how each concern was addressed or not addressed and the reasons for the action taken regarding each concern. The legislative services division shall prepare the third plan within the time constraints that will allow both houses of the legislature sufficient time to take action on the plan within 21 legislative days of the second plan's rejection. The third plan is subject to amendment by the legislature.*

(4) *If third plan is approved, it must be submitted to the secretary of state and it becomes law. If the third plan is not approved and submitted within 21 legislative days, the plans must be transmitted to a three-judge panel of district court judges who are appointed by the supreme court from three different judicial districts. The panel shall adopt a plan from any of the previous plans prepared or direct the legislative services division to prepare a nonpartisan legislative redistricting plan to be adopted within 45 calendar days of the third rejection. The panel shall file its final plan for legislative districts with the secretary of state and it becomes law.*

(5) *The legislature or the panel provided for in subsection (4) shall assign holdover senators as provided in [section 7] and submit the assignment as part of the final plan as provided in 5-1-109.*

(6) *A redistricting plan that has become law and that must be revised by order of a court must be revised by the legislative services division and presented to the legislature at the earliest opportunity to follow the process as provided in subsections (2) through (5).”*

**Section 7.** Section 5-1-111, MCA, is amended to read:

**“5-1-111. Final plan — dissolution of commission.** (1) Within 90 days after the official final decennial census figures are available, the commission shall file its final plan for congressional districts with the secretary of state and it ~~shall become~~ becomes law.

~~(2) Within 30 days after receiving the legislative redistricting plan and the legislature's recommendations, the commission shall file its final legislative redistricting plan with the secretary of state and it shall become law.~~

~~(3) Upon filing both plans, Upon filing the congressional plan and submitting a legislative plan to the legislature, as provided in 5-1-109, the commission shall be dissolved."~~

**Section 8.** Section 1, Chapter 4, Laws of 2003, is amended to read:

**"Section 1. Assignment of holdover senators.** (1) In the session in which the legislative redistricting plan is submitted to the legislature for recommendations, the legislature, ~~by joint resolution,~~ shall assign holdover senators to a district for the remainder of those senators' terms. The districting and apportionment commission may not assign holdover senators to districts for the remainder of those senators' terms *but may only make a recommendation.* The assignments must ~~occur after the~~ *be submitted as a part of the redistricting plan becomes law as provided in 5-1-109.*

(2) In making the assignments provided for in subsection (1), the legislature, if possible, shall assign a holdover senator to a district based upon the greatest percentage of population in the new district that ~~voted~~ *had the opportunity to vote* for the senator in the prior election and the senator's residence.

(3) For the purposes of this section, a holdover senator is a senator who is not required to seek election at the general election held immediately following the districting plan becoming law."

**Section 9. Repealer.** Section 5-1-110, MCA, is repealed.

**Section 10. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 5, chapter 1, part 1, and the provisions of Title 5, chapter 1, part 1, apply to [section 1].

**Section 11. Coordination instruction — contingent repealer.** (1) If [LC856] is not passed and approved at the general election to be held in November 2004, then [sections 2 through 9] in this act are void.

(2) If this act is passed and approved and [LC856] is passed and approved at the general election to be held in November 2004, then Chapter 3, Laws of 2003, is repealed.

(3) If this act is passed and approved and [LC856] is not passed and approved at the general election to be held in November 2004, then Chapter 3, Laws of 2003, is repealed.

**Section 12. Applicability.** [This act] applies to proceedings begun after [the effective date of this act] for the redistricting based on the 2010 decennial census.

Approved April 30, 2003

## CHAPTER NO. 547

[SB 492]

AN ACT CLARIFYING THAT THE BOARD OF REGENTS, ON BEHALF OF THE UNIVERSITY SYSTEM UNITS, MUST APPROVE AN OPERATING BUDGET CONTAINING DETAILED REVENUE AND EXPENDITURES OF ALL MONEY APPROPRIATED IN THE GENERAL APPROPRIATIONS ACT;

PROVIDING THAT TRANSFERS BETWEEN UNITS MAY BE MADE ONLY WITH THE APPROVAL OF THE BOARD OF REGENTS AFTER APPROVAL OF THE OPERATING BUDGET; REQUIRING THAT TRANSFERS BE SUBMITTED TO THE OFFICE OF BUDGET AND PROGRAM PLANNING AND THE LEGISLATIVE FISCAL ANALYST; AMENDING SECTION 17-7-138, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

**Section 1.** Section 17-7-138, MCA, is amended to read:

**“17-7-138. Operating budget.** (1) (a) Expenditures by a state agency must be made in substantial compliance with the budget approved by the legislature. Substantial compliance may be determined by conformity to the conditions contained in the general appropriations act and to legislative intent as established in the narrative accompanying the general appropriations act. An explanation of any significant change in agency or program scope, objectives, activities, or expenditures must be submitted to the legislative fiscal analyst for review and comment by the legislative finance committee prior to any implementation of the change. A significant change may not conflict with a condition contained in the general appropriations act. If the approving authority certifies that a change is time-sensitive, the approving authority may approve the change prior to the next regularly scheduled meeting of the legislative finance committee. The approving authority shall submit all proposed time-sensitive changes to the legislative fiscal analyst prior to approval. If the legislative fiscal analyst determines that notification of the legislative finance committee is warranted, the legislative fiscal analyst shall immediately notify as many members as possible of the proposed change and communicate any concerns expressed to the approving authority. The approving authority shall present a report fully explaining the reasons for the action to the next meeting of the legislative finance committee. Except as provided in subsection (2), the expenditure of money appropriated in the general appropriations act is contingent upon approval of an operating budget by August 1 of each fiscal year. An approved original operating budget must comply with state law and conditions contained in the general appropriations act.

(b) For the purposes of this subsection (1), an agency or program is considered to have a significant change in its scope, objectives, activities, or expenditures if:

(i) the operating budget change exceeds \$1 million; or

(ii) the operating budget change exceeds 25% of a budget category and the change is greater than \$25,000. If there have been other changes to the budget category in the current fiscal year, all the changes, including the change under consideration, must be used in determining the 25% and \$25,000 threshold.

(2) The expenditure of money appropriated in the general appropriations act to the ~~commissioner of higher education for distribution by the board of regents, to~~ *on behalf of the university system units, as defined in 17-7-102, is contingent upon approval of a comprehensive operating budget by October 1 of each fiscal year. The operating budget must contain detailed revenue and expenditures and anticipated fund balances of current funds, loan funds, endowment funds, and plant funds. After the board of regents approves operating budgets, transfers between units may be made only with the approval of the board of regents.*

*Transfers and related justification must be submitted to the office of budget and program planning and to the legislative fiscal analyst.*

(3) The operating budget for money appropriated by the general appropriations act must be separate from the operating budget for money appropriated by another law except a law appropriating money for the state pay plan or any portion of the state pay plan. The legislature may restrict the use of funds appropriated for personal services to allow use only for the purpose of the appropriation. Each operating budget must include expenditures for each agency program, detailed at least by first-level categories as provided in 17-1-102(3). Each agency shall record its operating budget for all funds, other than higher education funds, and any approved changes on the statewide budget and accounting state financial system. Documents implementing approved changes must be signed. The operating budget for higher education funds must be recorded on the university financial system, with separate accounting categories for each source or use of state government funds. State sources and university sources of funds may be combined for the general operating portion of the current unrestricted funds."

**Section 2. Effective date.** [This act] is effective July 1, 2003.

**Section 3. Applicability.** [This act] applies to university fiscal years beginning on or after July 1, 2003.

Approved April 30, 2003

## CHAPTER NO. 548

[HB 736]

AN ACT ESTABLISHING A K-12 PUBLIC SCHOOL RENEWAL COMMISSION; PROVIDING AN APPROPRIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, public schools are the foundation of Montana, providing citizens with the tools they need to strengthen our state's way of life and extending the principles of liberty; and

WHEREAS, approximately 16,000 full-time and part-time public school teachers guide over 149,000 students in the state of Montana; and

WHEREAS, as prescribed by Article X, section 1, of the Montana Constitution, a fundamental goal of the State of Montana is to establish a system of quality education that will develop the full educational potential of each person; and

WHEREAS, it is consistently proven on national assessments that Montana's excellent educators instruct superior students, and this fine system should be strengthened; and

WHEREAS, the Board of Public Education, of which the Superintendent of Public Instruction and the Governor are members, is constitutionally charged with general supervision over the public school system and other public educational institutions as may be assigned by law; and

WHEREAS, the first step in developing a competitive economy is a quality education system producing a qualified workforce; and

WHEREAS, due to repeated adjustments, revisions, and court decisions, the statutes governing the education system in Montana are plagued by inconsistent language, conflicting provisions, confusing funding mechanisms, and overlapping organizational structures that make it difficult for educators, parents, the legal community, and the general public to understand; and

WHEREAS, in order for the State of Montana to provide for an effective and efficient system of free quality public elementary and secondary education, a comprehensive renewal of education in Montana would be in the best interests of all of the state; and

WHEREAS, the Governor of Montana, the Board of Public Education, the Superintendent of Public Instruction, and the Montana Legislature should convene a commission to examine the various options available for the renewal of public education in Montana.

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

**Section 1. K-12 public school renewal commission.** (1) There is a K-12 public school renewal commission established to propose changes and new provisions regarding the several components of K-12 public education in Montana, including but not limited to:

- (a) the revenue available for public education;
- (b) the structure of school district governance;
- (c) the methods of funding public education;
- (d) the role of the state government in public education; and
- (e) the role of the federal government in public education.

(2) Core membership of the renewal commission must include the governor, the presiding officer of the board of public education, the superintendent of public instruction, the speaker of the house of representatives, the president of the senate, the minority leader of the house of representatives, and the minority leader of the senate. Core members may select a designee to represent the core member on the renewal commission.

(3) The governor, in consultation with the core membership, shall:

- (a) identify no less than 10 and no more than 25 entities who shall designate a representative to serve on the renewal commission;
  - (b) appoint a representative from the juvenile corrections division of the department of corrections to serve on the renewal commission;
  - (c) request assistance from other legislative and executive branch agencies;
- and

(d) in addition to any legislative appropriation, accept donations for the purposes of carrying out the duties of the renewal commission required in this section.

(4) The members of the renewal commission appointed pursuant to subsection (3)(a) may be reimbursed for expenses.

(5) (a) The renewal commission shall submit a final report of its findings and recommendations to the education and local government interim committee by September 15, 2004.

(b) The renewal commission may recommend legislation to the 59th legislature based on the commission's findings.

(6) As used in this section, the term "K-12 public education" includes a state youth correctional facility, as defined in 41-5-103.

**Section 2. Appropriation.** There is appropriated \$10,000 from the general fund to the board of public education for the biennium beginning July 1, 2003, to support the K-12 public school renewal commission.

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

Approved May 1, 2003

## CHAPTER NO. 549

[SB 406]

AN ACT PROVIDING THAT A CORNER RECORD MAY BE FILED IN LIEU OF A CERTIFICATE OF SURVEY IN CERTAIN INSTANCES; REQUIRING THAT THE COUNTY CLERK PROVIDE AN INDEX; PROVIDING THAT PARCELS CREATED FOR RIGHTS-OF-WAY OR UTILITY SITES ARE EXEMPT FROM THE SUBDIVISION REVIEW PROCESS UNLESS THERE IS A SUBSEQUENT CHANGE IN LAND USE; PROVIDING GUIDANCE ON EXEMPTIONS THAT ARE CREATED TO PROVIDE SECURITY FOR MORTGAGES, LIENS, OR TRUST INDENTURES; AND AMENDING SECTIONS 70-22-105, 70-22-109, 76-3-201, AND 76-3-404, MCA.

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

**Section 1.** Section 70-22-105, MCA, is amended to read:

**"70-22-105. Filing permitted as to any corner or accessory.** (1) A surveyor may file ~~such~~ a corner record ~~as~~ to any property corner, property controlling corner, reference monument, or accessory to a corner.

(2) *The filing of a properly completed corner record, documenting survey data used to determine the position of the corner, may be filed in lieu of filing a certificate of survey, as provided in 76-3-404, for the following listed corners:*

- (a) *a single, previously filed or recorded property corner;*
- (b) *a property controlling corner;*
- (c) *a reference monument; or*
- (d) *an accessory to a corner."*

**Section 2.** Section 70-22-109, MCA, is amended to read:

**"70-22-109. Duties of county clerk.** (1) The county clerk and recorder of the county containing the corner ~~shall~~ *must* receive the completed corner record and preserve it in a hardbound book. The books ~~shall~~ *must* be numbered in numerical order as filled.

(2) The clerk shall number the forms in numerical order as they are filed.

(3) The book and page number in which the corner record is filed ~~shall~~ *must* be placed by the clerk near that same corner on a cross-index plat *for public land corners or on an index referenced to tract or lot number in a survey of record. The which* the clerk shall provide *an index* for ~~such~~ *a* that purpose.

(4) The county clerk and recorder shall make these records available for public inspection during all usual office hours.

(5) There is no filing fee."

**Section 3.** Section 76-3-201, MCA, is amended to read:

**“76-3-201. Exemption for certain divisions of land.** (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 ~~construction~~ 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; ~~or~~

(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. 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.”*

**Section 4.** Section 76-3-404, MCA, is amended to read:

**“76-3-404. Certificate of survey.** (1) *Except as provided in 70-22-105, within* ~~Within~~ 180 days of the completion of a survey, the registered land surveyor responsible for the survey, whether ~~he~~ *the* surveyor is privately or publicly employed, shall prepare and submit for filing a certificate of survey in the county in which the survey was made if the survey:

(a) provides material evidence not appearing on any map filed with the county clerk and recorder or contained in the records of the United States bureau of land management;

(b) reveals a material discrepancy in ~~such~~ *the* map;

(c) discloses evidence to suggest alternate locations of lines or points; *or*



(d) establishes one or more lines not shown on a recorded map, the positions of which are not ascertainable from an inspection of ~~such~~ the map without trigonometric calculations.

(2) A certificate of survey ~~will is not be~~ required for any survey ~~which that~~ is made by the United States bureau of land management, ~~or which that~~ is preliminary, or ~~which that~~ will become part of a subdivision plat being prepared for recording under the provisions of this chapter.

(3) Certificates of survey ~~shall~~ must be legibly drawn, printed, or reproduced by a process guaranteeing a permanent record and ~~shall~~ must conform to monumentation and surveying requirements promulgated under this chapter.”

Approved May 1, 2003

## CHAPTER NO. 550

[SB 424]

AN ACT GENERALLY REVISING SCHOOL FINANCE; PROVIDING FOR ANNUAL INFLATION-RELATED ADJUSTMENTS TO THE BASE FUNDING PROGRAM AMOUNTS FOR SCHOOL DISTRICT BASIC ENTITLEMENTS AND PER-ANB ENTITLEMENTS; INCREASING THE BASIC AND PER-ANB ENTITLEMENTS FOR PUBLIC SCHOOLS FOR SCHOOL FISCAL YEAR 2004 AND SUCCEEDING YEARS; INCREASING SCHOOL FACILITY ENTITLEMENTS; DEFINING “FACILITY GUARANTEED MILL VALUE PER ANB”; CHANGING THE WAY IN WHICH A SCHOOL DISTRICT OR COOPERATIVE CHARGES EMPLOYER CONTRIBUTIONS FOR RETIREMENT, SOCIAL SECURITY, AND UNEMPLOYMENT INSURANCE; TERMINATING THE COUNTYWIDE SCHOOL RETIREMENT BLOCK GRANTS; REVISING THE SCHEDULE FOR STATE AND COUNTY TRANSPORTATION REIMBURSEMENT; ELIMINATING WEIGHTED RIDERSHIP; ESTABLISHING THREE SEPARATE BLOCK GRANTS; ALLOWING THE COMBINED FUND BLOCK GRANT TO BE DEPOSITED IN ANY BUDGETED FUND OF THE DISTRICT; AMENDING SECTIONS 20-9-306, 20-9-366, 20-9-370, 20-9-371, 20-9-501, 20-9-542, 20-10-101, AND 20-10-141, MCA; AMENDING SECTIONS 25 AND 26, CHAPTER 13, LAWS OF 2002; REPEALING SECTIONS 20-10-127 AND 20-10-128, MCA; AND PROVIDING EFFECTIVE DATES, APPLICABILITY DATES, AND A TERMINATION DATE.

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

**Section 1. Annual inflation-related adjustments to basic entitlements and per-ANB entitlements.** (1) In preparing and submitting an agency budget pursuant to 17-7-111 and 17-7-112, the superintendent of public instruction shall determine the inflation factor for the basic and per-ANB entitlements in each fiscal year of the ensuing biennium. The inflation factor is calculated as follows:

(a) for the first year of the biennium, divide the consumer price index for July 1 of the prior calendar year by the consumer price index for July 1 of the calendar year 3 years prior to the prior calendar year and raise the resulting ratio to the power of one-third; and

(b) for the second year of the biennium, divide the consumer price index for July 1 of the current calendar year by the consumer price index for July 1 of the

calendar year 3 years prior to the current calendar year and raise the resulting ratio to the power of one-third.

(2) The present law base for the basic and per-ANB entitlements, calculated under Title 17, chapter 7, part 1, must consist of any enrollment increases or decreases plus the inflation factor calculated pursuant to this section, not to exceed 3% in each year, applied to both years of the biennium.

(3) For the purposes of this section, "consumer price index" means the consumer price index, U.S. city average, all urban consumers, for all items, using the 1982-84 base of 100, as published by the bureau of labor statistics of the U.S. department of labor.

**Section 2.** 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; and

(b) 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 ~~up to~~ 40% of the special education allowable cost 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, and up to 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) ~~\$213,819~~ \$216,171 for each high school district;

(b) ~~\$19,244~~ \$19,456 for each elementary school district or K-12 district elementary program without an approved and accredited junior high school or middle school; and

(c) the prorated entitlement for each elementary school district or K-12 district elementary program with an approved and accredited junior high school or middle school, calculated as follows:

(i) ~~\$19,244~~ \$19,456 times the ratio of the ANB for kindergarten through grade 6 to the total ANB of kindergarten through grade 8; plus

(ii) ~~\$213,819~~ \$216,171 times the ratio of the ANB for grades 7 and 8 to the total ANB of kindergarten through grade 8.

(7) "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.

(8) "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, and the greater of:

(a) 175% of special education allowable cost payments; 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%.

(9) "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.

(10) "Total per-ANB entitlement" means the district entitlement resulting from the following calculations:

(a) for a high school district or a K-12 district high school program, a maximum rate of ~~\$5,205~~ \$5,262 for the first ANB is 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 or middle school, a maximum rate of ~~\$3,906~~ \$3,949 for the first ANB is 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 or middle school, the sum of:

(i) a maximum rate of ~~\$3,906~~ \$3,949 for the first ANB for kindergarten through grade 6 is 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 ~~\$5,205~~ \$5,262 for the first ANB for grades 7 and 8 is 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."

**Section 3.** 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; and

(b) 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 ~~up to~~ 40% of the special education allowable cost 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, and up to 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) ~~\$213,819~~ \$220,646 for each high school district;

(b) ~~\$19,244~~ \$19,859 for each elementary school district or K-12 district elementary program without an approved and accredited junior high school or middle school; and

(c) the prorated entitlement for each elementary school district or K-12 district elementary program with an approved and accredited junior high school or middle school, calculated as follows:

(i) ~~\$19,244~~ \$19,859 times the ratio of the ANB for kindergarten through grade 6 to the total ANB of kindergarten through grade 8; plus

(ii) ~~\$213,819~~ \$220,646 times the ratio of the ANB for grades 7 and 8 to the total ANB of kindergarten through grade 8.

(7) "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.

(8) "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, and the greater of:

(a) 175% of special education allowable cost payments; 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%.

(9) "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.

(10) "Total per-ANB entitlement" means the district entitlement resulting from the following calculations:

(a) for a high school district or a K-12 district high school program, a maximum rate of ~~\$5,205~~ \$5,371 for the first ANB is 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 or middle school, a maximum rate of ~~\$3,906~~ \$4,031 for the first ANB is 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 or middle school, the sum of:

(i) a maximum rate of ~~\$3,906~~ \$4,031 for the first ANB for kindergarten through grade 6 is 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 ~~\$5,205~~ \$5,371 for the first ANB for grades 7 and 8 is 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."

**Section 4.** Section 20-9-366, MCA, is amended to read:

**"20-9-366. Definitions.** As used in 20-9-366 through ~~20-9-369~~ 20-9-371, the following definitions apply:

(1) "County retirement mill value per elementary ANB" or "county retirement mill value per high school ANB" means the sum of the taxable valuation in the previous year of all property in the county divided by 1,000, with the quotient divided by the total county elementary ANB count or the total county high school ANB count used to calculate the elementary school districts' and high school districts' current year total per-ANB entitlement amounts.

(2) (a) "District guaranteed tax base ratio" for guaranteed tax base funding for the BASE budget of an eligible district means the taxable valuation in the previous year of all property in the district divided by the sum of the district's current year BASE budget amount less direct state aid.

(b) "District mill value per ANB", for school facility entitlement purposes, means the taxable valuation in the previous year of all property in the district divided by 1,000, with the quotient divided by the ANB count of the district used to calculate the district's current year total per-ANB entitlement amount.

(3) "*Facility guaranteed mill value per ANB*", for school facility entitlement guaranteed tax base purposes, means the sum of the taxable valuation in the previous year of all property in the state, multiplied by 140% and divided by 1,000, with the quotient divided by the total ANB amount used to calculate the school districts' current year total per-ANB entitlement.

~~(3)~~(4) (a) "Statewide elementary guaranteed tax base ratio" or "statewide high school guaranteed tax base ratio", for guaranteed tax base funding for the BASE budget of an eligible district, means the sum of the taxable valuation in the previous year of all property in the state, multiplied by 175% and divided by the total sum of either the state elementary school districts' or the high school districts' current year BASE budget amounts less total direct state aid.

(b) "Statewide mill value per elementary ANB" or "statewide mill value per high school ANB", for school facility entitlement and retirement guaranteed tax base purposes, means the sum of the taxable valuation in the previous year of all property in the state, multiplied by 121% and divided by 1,000, with the quotient divided by the total state elementary ANB count or the total state high school

ANB amount used to calculate the elementary school districts' and high school districts' current year total per-ANB entitlement amounts."

**Section 5.** Section 20-9-370, MCA, is amended to read:

**"20-9-370. Definitions.** As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "School facility entitlement" means:

(a) ~~\$220~~ \$300 per ANB for an elementary school district;

(b) ~~\$330~~ \$450 per ANB for a high school district; or

(c) ~~\$270~~ \$370 per ANB for an approved and accredited junior high school or middle school.

(2) "State advance for school facilities" is the amount of state equalization aid distributed to an eligible district to pay the debt service obligation for a bond in the first school fiscal year in which a debt service payment is due for the bond.

(3) "State reimbursement for school facilities" means the amount of state equalization aid distributed to a district that:

(a) has a district mill value per ~~elementary~~ ANB that is less than the corresponding ~~statewide mill value per elementary ANB or a district mill value per high school ANB that is less than the corresponding statewide mill value per high school ANB~~ *facility guaranteed mill value per ANB*; and

(b) has a debt service obligation in the ensuing school year on bonds ~~for which the original issue was sold after July 1, 1991.~~

(4) "Total school facility entitlement" means the school facility entitlement times the total ANB for the district."

**Section 6.** Section 20-9-371, MCA, is amended to read:

**"20-9-371. Calculation and uses of school facility entitlement amount.** (1) The state reimbursement for school facilities for a district is the percentage determined in 20-9-346(2)(b) times (1-(district mill value per ANB/~~statewide facility guaranteed~~ mill value per ANB)) times the lesser of the total school facility entitlement calculated under the provisions of 20-9-370 or the district's current year debt service obligations on bonds that qualify under the provisions of 20-9-370(3).

(2) The state advance for school facilities for a district is determined as follows:

(a) Calculate the percentage of the district's debt service payment that will be advanced by the state using the district ANB, the district mill value and the statewide mill value for the current year, and the percentage used to determine the proportionate share of state reimbursement for school facilities in the prior year.

(b) Multiply the percentage determined in subsection (2)(a) by the lesser of the total school facility entitlement calculated under the provisions of 20-9-370 or the district's current year debt service obligation for bonds to which the state advance applies.

(3) Within the available appropriation, the superintendent of public instruction shall first distribute to eligible districts the state advance for school facilities. From the remaining appropriation, the superintendent shall distribute to eligible districts the state reimbursement for school facilities.

(4) The trustees of a district may apply the state reimbursement for school facilities to reduce the levy requirement in the ensuing school fiscal year for all outstanding bonded indebtedness on bonds sold in the debt service fund of the district ~~after July 1, 1991~~. The trustees may apply the state advance for school facilities to reduce the levy requirement in the current school fiscal year for debt service payments on bonds to which the state advance for school facilities applies."

**Section 7.** Section 20-9-501, MCA, is amended to read:

**"20-9-501. Retirement costs and retirement fund.** (1) The trustees of a district *or the management board of a cooperative* employing personnel who are members of the teachers' retirement system or the public employees' retirement system or who are covered by unemployment insurance or who are covered by any federal social security system requiring employer contributions shall establish a retirement fund for the purposes of budgeting and paying the employer's contributions to the systems *as provided in subsection (2)(a)*. The district's *or the cooperative's* contribution for each employee who is a member of the teachers' retirement system must be calculated in accordance with Title 19, chapter 20, part 6. The district's *or the cooperative's* contribution for each employee who is a member of the public employees' retirement system must be calculated in accordance with 19-3-316. The district's *or the cooperative's* contributions for each employee covered by any federal social security system must be paid in accordance with federal law and regulation. The district's *or the cooperative's* contribution for each employee who is covered by unemployment insurance must be paid in accordance with Title 39, chapter 51, part 11.

(2) (a) *The district or the cooperative shall pay the employer's contributions to the retirement, federal social security, and unemployment insurance systems from the retirement fund for the following:*

(i) *a district employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from state or local funding sources;*

(ii) *a cooperative employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from the cooperative's interlocal agreement fund if the fund is supported solely from districts' general funds and state special education allowable cost payments pursuant to 20-9-321; and*

(iii) *a district employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from the district's school food services fund provided for in 20-10-204.*

(b) *For an employee whose benefits are not paid from the retirement fund, the district or the cooperative shall pay the employer's contributions to the retirement, federal social security, and unemployment insurance systems from the funding source that pays the employee's salary.*

~~(2)~~(3) The trustees of a district required to make a contribution to a system referred to in subsection (1) shall include in the retirement fund of the final budget the estimated amount of the employer's contribution. After the final retirement fund budget has been adopted, the trustees shall pay the employer contributions to the systems in accordance with the financial administration provisions of this title.

~~(3)~~(4) When the final retirement fund budget has been adopted, the county superintendent shall establish the levy requirement by:

(a) determining the sum of the money available to reduce the retirement fund levy requirement by adding:

(i) any anticipated money that may be realized in the retirement fund during the ensuing school fiscal year;

(ii) oil and natural gas production taxes;

(iii) coal gross proceeds taxes under 15-23-703;

(iv) countywide school retirement block grants distributed under section 245, Chapter 574, Laws of 2001;

(v) any fund balance available for reappropriation as determined by subtracting the amount of the end-of-the-year fund balance earmarked as the retirement fund operating reserve for the ensuing school fiscal year by the trustees from the end-of-the-year fund balance in the retirement fund. The retirement fund operating reserve may not be more than 35% of the final retirement fund budget for the ensuing school fiscal year and must be used for the purpose of paying retirement fund warrants issued by the district under the final retirement fund budget.

(vi) any other revenue anticipated that may be realized in the retirement fund during the ensuing school fiscal year, excluding any guaranteed tax base aid.

(b) notwithstanding the provisions of subsection ~~(8)~~ (9), subtracting the money available for reduction of the levy requirement, as determined in subsection ~~(3)(a)~~ (4)(a), from the budgeted amount for expenditures in the final retirement fund budget.

~~(4)~~(5) The county superintendent shall:

(a) total the net retirement fund levy requirements separately for all elementary school districts, all high school districts, and all community college districts of the county, including any prorated joint district or special education cooperative agreement levy requirements; and

(b) report each levy requirement to the county commissioners on the fourth Monday of August as the respective county levy requirements for elementary district, high school district, and community college district retirement funds.

~~(5)~~(6) The county commissioners shall fix and set the county levy or district levy in accordance with 20-9-142.

~~(6)~~(7) The net retirement fund levy requirement for a joint elementary district or a joint high school district must be prorated to each county in which a part of the district is located in the same proportion as the district ANB of the joint district is distributed by pupil residence in each county. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county as provided in 20-9-151.

~~(7)~~(8) The net retirement fund levy requirement for districts that are members of special education cooperative agreements must be prorated to each county in which the district is located in the same proportion as the special education cooperative budget is prorated to the member school districts. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county in the same manner as provided in 20-9-151, and the county commissioners shall fix and levy the net retirement fund levy for each county in the same manner as provided in 20-9-152.



~~(8)~~(9) The county superintendent shall calculate the number of mills to be levied on the taxable property in the county to finance the retirement fund net levy requirement by dividing the amount determined in subsection ~~(4)(a)~~ (5)(a) by the sum of:

- (a) the amount of guaranteed tax base aid that the county will receive for each mill levied, as certified by the superintendent of public instruction; and
- (b) the taxable valuation of the district divided by 1,000.

~~(9)~~(10) The levy for a community college district may be applied only to property within the district.”

**Section 8.** Section 20-9-542, MCA, is amended to read:

**“20-9-542. School flexibility account — distribution of funds.** (1) There is a school flexibility account in the state special revenue fund. The superintendent of public instruction shall allocate the money in the account, including any interest earned on money allocated to the account, to each school district. Each school district’s total allocation is the sum of the district K-12 public school funding amount, the district large K-12 public school funding amount, and the district student funding amount.

(2) In addition to funds allocated or appropriated to the school flexibility account, all money saved by the state if the actual statewide ANB in a given fiscal year is less than the statewide ANB projected by the legislature during the preceding legislative session must be deposited in the school flexibility account.

(3) *A portion of the money in the school flexibility account may be expended by a district to alleviate certified staff shortages in the district or for retirement incentives only if a portion of the account is specified for that purpose in a general appropriation act.*”

**Section 9.** 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) 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.

(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; 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.

~~(7) "Weighted ridership" means the sum of the passenger points assigned to the eligible transportees who are transported on a bus route."~~

**Section 10.** Section 20-10-141, MCA, is amended to read:

**"20-10-141. Schedule of maximum reimbursement by mileage rates.**

(1) The ~~following~~ 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 ~~per for each~~ bus mile traveled must be determined in accordance with the following schedule ~~when the weighted ridership assigned to a bus route is not less than one-half of the rated capacity of the school bus:~~

~~(a)(i) 85 95 cents per bus mile for a school bus with a rated capacity of not more than 45 49 passenger seating positions;~~

~~(ii) \$1.15 for a school bus with a rated capacity of 50 to 59 passenger seating positions;~~

~~(iii) \$1.36 for a school bus with a rated capacity of 60 to 69 passenger seating positions;~~

~~(iv) \$1.57 for a school bus with a rated capacity of 70 to 79 passenger seating positions; and~~

~~(v) \$1.80 for a school bus with 80 or more passenger seating positions.~~

~~(b) when the rated capacity is more than 45 passenger seating positions, an additional 2.13 cents per bus mile for each additional passenger seating position in the rated capacity in excess of 45 must be added to a base rate of 85 cents per bus mile. Nonbus mileage, as provided in subsection (1), must be reimbursed at a rate of 50 cents a mile.~~

~~(3) Reimbursement for nonbus mileage provided for in subsection (1) may not exceed 50% of the maximum reimbursement rate determined under subsection (2).~~

~~(4) When the weighted ridership assigned to a bus route is less than one-half of the rated capacity of the school bus, the rate per bus mile traveled must be computed as follows:~~

~~(a) determine the weighted ridership assigned to the bus route;~~

~~(b) multiply the number determined in subsection (4)(a) by two; and~~

~~(c) use the adjusted rated capacity determined in subsection (4)(b) as the rated capacity of the bus to determine the rate per bus mile traveled from the rate schedule in subsection (2).~~

~~(5)(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.~~

~~(6)(4) The number of pupils riding the school bus may not exceed the passenger seating positions of the bus."~~

**Section 11.** Section 25, Chapter 13, Laws of 2002, is amended to read:

**Section 25.** Section 244, Chapter 574, Laws of 2001, is amended to read:

**Section 244. School district block grants.** (1) (a) The office of public instruction shall provide a block grant to each school district based on the revenue received by each district in fiscal year 2001 from vehicle taxes and fees, corporate license 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.

(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 ~~a portion of~~ the block grant amount into each district's ~~fiscal year 2002~~ budget as an anticipated revenue source by fund.

(c) With the exception of vehicle taxes and fees, the office of public instruction shall use the amount actually received from the sources listed in subsection (1)(a) in fiscal year 2001 in its calculation of the block grant for fiscal year 2002 budgeting purposes. For vehicle taxes and fees, the office of public instruction shall use 93.4% of the amount actually received in fiscal year 2001 in calculating the block grant for fiscal year 2002.

(2) If the ~~biennial~~ *fiscal year 2003* appropriation provided in [section 248(1)] is insufficient to fund the school district block grants in fiscal year 2003 at the fiscal year 2002 level, the office of public instruction shall prorate the block grants to meet the remaining appropriation. School districts shall anticipate the prorated block grant amounts provided by the office of public instruction in their budgets for fiscal year 2003.

(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. ~~If the appropriation for block grants is greater than or less than the amount received by schools from the sources enumerated in subsection (1), the office of public instruction shall prorate the amount appropriated based upon the fiscal year 2001 revenue.~~

(4) (a) ~~The average amount of the block grants in fiscal years 2002 and 2003 must be increased by 0.76% in fiscal year 2004 and in each succeeding fiscal year. The block grant for the district general fund is equal to the average amount received in fiscal years 2002 and 2003 by the district general fund from the block grants provided for in subsection (1). The block grant must be increased by 0.76% in fiscal year 2004 and in each succeeding fiscal year.~~

(b) ~~The block grant for the district transportation fund is equal to one-half of the average amount received in fiscal years 2002 and 2003 by the district transportation fund from the block grants provided for in subsection (1). The block grant must be increased by 0.76% in fiscal year 2004 and in each succeeding fiscal year.~~

(c) (i) ~~The combined fund block grant is equal to the average amount received in fiscal years 2002 and 2003 by the district tuition, bus depreciation reserve, building reserve, nonoperating, and adult education funds from the block grants provided for in subsection (1). The block grant must be increased by 0.76% in fiscal year 2004 and in each succeeding fiscal year.~~

(ii) ~~The school district may deposit the combined fund block grant into any budgeted fund of the district."~~

**Section 12.** Section 26, Chapter 13, Special Laws of August 2002, is amended to read:

**"Section 26.** Section 245, Chapter 574, Laws of 2001, is amended to read:

**"Section 245. Countywide school retirement block grants.** (4) The office of public instruction shall distribute one-half of the amount appropriated

for countywide school retirement in November and the remainder in May. The total amount for each county is as follows:

	FY 2002 Elementary Payment	FY 2002 High School Payment	FY 2003 Elementary Payment	FY 2003 High School Payment
Beaverhead	\$86,692	\$50,789	<del>\$87,351</del> \$55,503	<del>\$51,175</del> \$41,981
Big Horn	62,668	36,963	<del>63,144</del> 95,018	<del>37,244</del> 33,837
Blaine	61,160	10,193	<del>61,624</del> 46,318	<del>10,271</del> 81,109
Broadwater	0	92,686	0	<del>93,390</del> 34,949
Carbon	43,451	82,110	<del>43,782</del> 72,602	<del>82,734</del> 58,957
Carter	9,751	5,453	<del>9,825</del> 8,478	<del>5,495</del> 6,155
Cascade	349,056	192,848	<del>351,709</del> 282,266	<del>194,314</del> 142,282
Chouteau	75,384	41,034	<del>75,957</del> 58,455	<del>41,346</del> 29,474
Custer	78,925	36,930	<del>79,525</del> 57,608	<del>37,211</del> 32,128
Daniels	0	37,994	0	<del>38,283</del> 36,083
Dawson	85,568	38,722	<del>86,219</del> 64,693	<del>39,016</del> 24,827
Deer Lodge	39,980	17,059	<del>40,284</del> 34,455	<del>17,189</del> 16,807
Fallon	0	0	0	0 30,444
Fergus	119,028	78,809	<del>119,932</del> 90,464	<del>79,408</del> 55,527
Flathead	558,861	296,410	<del>563,108</del> 530,274	<del>298,662</del> 268,731
Gallatin	383,035	181,743	<del>385,946</del> 537,244	<del>183,125</del> 107,717
Garfield	12,337	10,170	<del>12,431</del> 12,100	<del>10,247</del> 4,620
Glacier	79,924	34,016	<del>80,532</del> 106,815	<del>34,275</del> 10,494
Golden Valley	0	16,716	0	<del>16,843</del> 14,492
Granite	14,074	48,026	<del>14,180</del> 12,523	<del>48,391</del> 30,727
Hill	142,867	82,538	<del>143,953</del> 59,593	<del>83,165</del> 35,211
Jefferson	116,679	59,523	<del>117,565</del> 143,901	<del>59,976</del> 59,690
Judith Basin	6,149	21,359	<del>6,196</del> 4,744	<del>21,521</del> 30,198
Lake	173,584	139,990	<del>174,903</del> 156,485	<del>141,054</del> 103,365
Lewis & Clark	344,112	211,726	<del>346,728</del> 370,958	<del>213,335</del> 173,847
Liberty	20,144	16,786	<del>20,297</del> 3,067	<del>16,914</del> 31,953
Lincoln	73,001	98,835	<del>73,556</del> 61,499	<del>99,586</del> 87,710
Madison	0	103,163	0 4,891	<del>103,947</del> 19,788
McCone	23,214	15,824	<del>23,396</del> 21,778	<del>15,945</del> 14,004
Meagher	13,654	10,678	<del>13,758</del> 9,250	<del>10,759</del> 9,492
Mineral	0	32,206	0	<del>32,451</del> 33,292
Missoula	487,129	362,756	<del>490,832</del> 587,637	<del>365,513</del> 357,669
Musselshell	30,675	21,577	<del>30,908</del> 48,959	<del>21,741</del> 41,250
Park	154,192	81,696	<del>155,364</del> 135,256	<del>82,317</del> 78,135
Petroleum	0	16,897	0	<del>17,026</del> 9,510
Phillips	10,502	95,084	<del>10,582</del> 103,747	<del>95,806</del> 54,728
Pondera	79,805	60,307	<del>80,411</del> 18,821	<del>60,765</del> 47,629
Powder River	18,815	15,011	<del>18,958</del> 0	<del>15,125</del> 0
Powell	69,695	22,666	<del>70,225</del> 71,420	<del>22,838</del> 30,458
Prairie	0	26,791	0	<del>26,995</del> 21,945
Ravalli	85,333	169,769	<del>85,984</del> 2,062	<del>171,059</del> 40,316
Richland	83,671	30,302	<del>84,367</del> 15,500	<del>30,533</del> 26,650
Roosevelt	71,090	60,329	<del>71,630</del> 96,278	<del>60,787</del> 61,038

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Rosebud	359,662	286,411	<del>302,395</del> 475,055	<del>288,588</del> 126,246
Sanders	203,863	127,694	<del>205,413</del> 197,286	<del>128,005</del> 14,442
Sheridan	0	46,231	0	<del>40,583</del> 47,628
Silver Bow	249,821	141,541	<del>251,719</del> 193,304	<del>142,017</del> 119,358
Stillwater	91,487	75,926	<del>92,182</del> 91,185	<del>70,503</del> 51,769
Sweet Grass	36,996	36,327	<del>37,277</del> 24,214	<del>30,003</del> 12,316
Teton	57,760	41,547	<del>58,199</del> 45,217	<del>41,803</del> 40,769
Toole	43,323	51,399	<del>43,052</del> 36,109	<del>51,790</del> 73,362
Treasure	0	18,947	0	<del>19,091</del> 16,243
Valley	15,824	90,532	<del>15,944</del> 10,558	<del>91,220</del> 143,204
Wheatland	20,946	12,103	<del>21,105</del> 15,031	<del>12,195</del> 12,109
Wibaux	0	14,585	0	<del>14,090</del> 25,103
Yellowstone	1,125,488	643,136	<del>1,134,042</del> 1,070,887	<del>648,024</del> 612,203
Total	6,269,374	4,650,865	<del>6,317,022</del> 6,139,506	<del>4,080,212</del> 3,723,973

(2) ~~The average amount of the block grants in fiscal years 2002 and 2003 must be increased by 0.76% in fiscal year 2004 and in each succeeding fiscal year."~~

**Section 13. Repealer.** Sections 20-10-127 and 20-10-128, MCA, are repealed.

**Section 14. Extension of school election deadlines.** In order to allow for the orderly and efficient conduct of the regular school elections scheduled for May 6, 2003, it may not be possible to comply with certain statutory deadlines relating to a school election. Therefore, in 2003 only, a school district may limit the regular school election scheduled for May 6, 2003, to trustee elections only and may reschedule a single general fund operating levy election at any time prior to the adoption of a final budget pursuant to 20-9-131. In addition, all statutory deadlines for the May 6, 2003, regular school election that fall on or before April 18 are extended to April 28, 2003, except that the timeline for posting the election notice is changed to April 28, 2003, through May 2, 2003.

**Section 15. Restrictions on retirement fund for fiscal year 2004.** (1) For school fiscal year 2004, the amount that a school district or cooperative may charge to the retirement fund for the employer's contributions to the retirement, federal social security, and unemployment insurance systems for all employees whose salaries are paid from a federal funding source is limited to the amount that the district or cooperative charged to the retirement fund for those same purposes for the same group of employees in school fiscal year 2003.

(2) The restriction in subsection (1) does not apply to employees whose salaries are paid from the district's school food services fund.

**Section 16. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 20, chapter 9, part 3, and the provisions of Title 20, chapter 9, part 3, apply to [section 1].

**Section 17. Effective dates — applicability.** (1) [Section 1] is effective July 1, 2004, and applies to school budgets for the fiscal years beginning on or after July 1, 2005.

(2) [Section 2] is effective July 1, 2003, and applies to school budgets for the school fiscal year beginning July 1, 2003.

(3) [Section 3] is effective July 1, 2004, and applies to school budgets for the school fiscal years beginning on or after July 1, 2004.

(4) [Sections 4 through 6 and 8 through 13] are effective July 1, 2003.

(5) [Section 7] is effective July 1, 2004.

(6) [Sections 14, 15, 16, 18, 19, and this section] are effective on passage and approval.

**Section 18. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to actions taken by the trustees of a school district on or after March 27, 2003.

**Section 19. Termination.** [Section 2] terminates June 30, 2004.

Approved May 1, 2003

## CHAPTER NO. 551

[SB 473]

AN ACT PROVIDING FOR A PRESCRIPTION DRUG EXPANSION PROGRAM UNDER MEDICAID; AUTHORIZING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO IMPLEMENT THE PRESCRIPTION DRUG EXPANSION PROGRAM UNDER MEDICAID; PROVIDING AN ANNUAL APPLICATION FEE FOR THE PROGRAM; AUTHORIZING A LOAN FROM THE BOARD OF INVESTMENTS FOR THE STARTUP COST OF THE PROGRAM; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

WHEREAS, the Legislature finds that the cost of prescription drugs is a major threat to the public health of Montana citizens; and

WHEREAS, other states have implemented innovative prescription drug access and affordability legislation that can be adapted to meet Montana's needs; and

WHEREAS, the Legislature finds it necessary to provide some relief for the high cost of prescription drugs by using an expanded Medicaid program for which reimbursement will be sought through Medicaid rebates and federal reimbursement programs.

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

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

(1) "Average wholesale price" means the wholesale price charged on a specific commodity that is assigned by the drug manufacturer and is listed in a nationally recognized drug pricing file.

(2) "Department" means the department of public health and human services provided for in Title 2, chapter 15, part 22.

(3) "Discounted price" means a price that is less than or equal to the average wholesale price, minus a percentage between 6% and 25% determined by the department pursuant to [section 2].

(4) "Gross household income" has the meaning provided in 15-30-171.

(5) "Manufacturer" means a manufacturer of prescription drugs and includes a subsidiary or affiliate of a manufacturer.

(6) "Participating retail pharmacy" means a retail pharmacy located in this state or another business licensed to dispense prescription drugs in this state that is medicaid-approved.

(7) "Program" means the medicaid prescription drug program provided for in [section 2].

**Section 2. Prescription drug expansion program — rules.** (1) By July 1, 2004, or upon securing any necessary waivers, the department shall provide for an expansion of prescription drug benefits under the medicaid program by offering prescription drugs at a discounted price to qualified individuals whose income is at a level set by the department at or below 200% of the federal poverty level. Subject to subsection (7), the department shall charge an annual application fee of \$25 for the program. The application fee must be deposited in the medicaid prescription drug rebate account established in subsection (2).

(2) There is a medicaid prescription drug rebate account in the state special revenue fund to the credit of the department. All money received by the state as rebates from pharmaceutical manufacturers for the medicaid prescription drug expansion program must be deposited in the account. The money in the account, which is administered by the department, must be used to expand medicaid prescription drug benefits. Interest on account balances accrues to the account. The purpose of the account is to:

(a) reimburse participating retail pharmacies for the discount on the average wholesale price of prescription drugs provided to qualified residents pursuant to [sections 1 through 7]; and

(b) reimburse the department for contracted services, administrative costs, associated computer costs, professional fees paid to participating retail pharmacies, and other reasonable program costs.

(3) The department shall provide for sufficient personnel to ensure efficient administration of the program. The extent and the magnitude of the program must be determined by the department on the basis of the calculated need of the recipient population and available funds. The department may not spend more on this program than is available through appropriations, federal or other grants, and other established and committed funding sources. The department may accept, for the purposes of carrying out this program, federal funds appropriated under any federal law relating to the furnishing of free or low-cost drugs to disadvantaged, elderly, and disabled individuals, may take action that is necessary for the purposes of carrying out that federal law, and may accept from any other agency of government, individual, group, or corporation funds that may be available to carry out [sections 1 through 7].

(4) The department may adopt rules relating to the conduct of this program. The rules may be based upon rules adopted in other states to administer similar programs.

(5) The department shall adopt rules to establish the discounted price to be charged to participants in the program. The department may establish a discounted price to encourage the use of generic drugs over higher-cost brand-name drugs.

(6) The department shall establish by rule eligibility based upon the applicant's family income as provided in [section 3]. The total income may not exceed 200% of the federal poverty level. The department may adopt rules defining income. In establishing eligibility based upon income, the department



shall take into account the amount of funding available for the program. The department shall issue enrollment cards to eligible individuals.

(7) Establishment of the prescription drug expansion program is contingent upon approval by the federal government that the program in [sections 1 through 7] will qualify for federal financial participation under federal laws implementing the medicaid program. The department may adopt rules necessary to implement conditions required by federal law or conditions required as part of the federal government's agreement to waive certain requirements of federal law.

(8) If program costs are expected to exceed the legislative authorization for the program, the department shall adjust discounted prices, the application fee, or eligibility standards to maintain the program within the available funding.

**Section 3. Eligibility — income determination.** (1) To be eligible for the program, an individual must be:

- (a) at least 62 years of age;
- (b) 18 years of age or older and determined to be disabled by the federal social security program; or
- (c) eligible for mental health services pursuant to 53-21-702(2).

(2) Subject to [section 2(8)], individuals are eligible for the program if the gross household income is at or below the amount set by the department, which may not be more than 200% of the federal poverty level.

**Section 4. Specifications for administration of program.** (1) The department shall adopt specifications for the administration and management of the program. Specifications may include but are not limited to program objectives, accounting and handling practices, supervisory authority, and an evaluation methodology. The department shall apply for any waivers of federal law that are necessary to implement the program.

(2) Information disclosed by manufacturers during negotiations and all terms and conditions negotiated between the director and manufacturers and all information requested or required under the program must be kept confidential, except as the department determines is necessary to carry out the program. The department shall comply with the budget neutrality provisions required by the United States department of health and human services for the granting of any waivers.

(3) The department may not use access restrictions, supplemental rebates, or a preferred drug list to comply with the budget neutrality provisions when negotiating with the federal government for this waiver. These restrictions do not apply to other components of the medicaid or mental health services plan or drugs provided in those programs. These restrictions apply only to the prescription drug expansion program provided for in [section 2].

**Section 5. Appeals.** An eligibility determination made by the department based on information provided by the department of revenue is final, subject to appeal in accordance with the appeal process established in the medicaid program.

**Section 6. Obligations of department.** The department shall establish simplified procedures for determining eligibility and issuing Montana prescription enrollment cards to qualified individuals under [section 2] and shall undertake outreach efforts to build public awareness of the program and maximize enrollment of qualified individuals. The department may adjust the

requirements and terms of the program to accommodate any new federally funded prescription drug programs.

**Section 7. Contracting.** The department may contract for the administration of any components of the program, including but not limited to outreach, eligibility, claims, administration, and drug rebate recovery and redistribution.

**Section 8. Loan for startup costs.** The department of public health and human services may apply for a loan from the board of investments under the revolving loan program provided for in 17-5-1605 to pay the startup costs of the program provided for in [sections 1 through 7].

**Section 9. Codification instruction.** [Sections 1 through 7] are intended to be codified as an integral part of Title 53, and the provisions of Title 53 apply to [sections 1 through 7].

**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. Contingent voidness.** If the department of public health and human services is unable to obtain a waiver that includes persons who are eligible for mental health services pursuant to 53-21-702(2), the department shall notify the code commissioner and [section 3(1)(c)] is void.

**Section 12. Effective date.** [This act] is effective July 1, 2003.

**Section 13. Termination.** [Section 4(3)] terminates June 30, 2005.

Approved May 1, 2003

## CHAPTER NO. 552

[HB 13]

AN ACT PROVIDING FOR PAY AND BENEFITS FOR STATE EMPLOYEES IN THE STATEWIDE, TEACHERS', AND BLUE-COLLAR PAY PLANS; PROVIDING SALARY INCREASES; FREEZING THE STATEWIDE PAY SCHEDULE; INCREASING THE EMPLOYER CONTRIBUTION TO THE EMPLOYEE GROUP BENEFITS PROGRAMS; APPROPRIATING FUNDS FOR THE INCREASES AND FOR A PERSONAL SERVICES CONTINGENCY POOL; AMENDING SECTIONS 2-18-301, 2-18-303, 2-18-312, 2-18-313, 2-18-315, AND 2-18-703, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 2-18-301, MCA, is amended to read:

**“2-18-301. Purpose and intent of part — rules.** (1) The purpose of this part is to provide the market-based compensation necessary to attract and retain competent and qualified employees in order to perform the services that the state is required to provide to its citizens.

(2) It is the intent of the legislature that compensation plans for state employees, excluding those employees excepted under 2-18-103 or 2-18-104 and excluding employees compensated under 2-18-313 and 2-18-315, be based on an analysis of the labor market as provided by the department in a salary survey.

The salary survey must be submitted to the office of budget and program planning as a part of the information required by 17-7-111.

(3) Except as provided in 2-18-110, ~~pay adjustments and~~ *pay adjustments and* pay schedules provided for in 2-18-303 and in 2-18-312, 2-18-313, and 2-18-315 supersede any other plan or systems established through collective bargaining after the adjournment of the ~~57th~~ *58th* legislature.

(4) Pay levels provided for in 2-18-312, 2-18-313, and 2-18-315 may not be increased through collective bargaining after adjournment of the ~~57th~~ *58th* legislature.

(5) Total funds required to implement the pay schedules provided for in 2-18-312, 2-18-313, and 2-18-315 for any employee group or bargaining unit may not be increased through collective bargaining over the amount appropriated by the ~~57th~~ *58th* legislature.

(6) The department shall administer the pay program established by the legislature on the basis of merit, internal equity, and competitiveness to external labor markets when fiscally able.

(7) The department may promulgate rules not inconsistent with the provisions of this part, collective bargaining statutes, or negotiated contracts to carry out the purposes of this part.

(8) Nothing in this part prohibits the board of regents from engaging in negotiations with the collective bargaining units representing the classified staff of the university system."

**Section 2.** Section 2-18-303, MCA, is amended to read:

**"2-18-303. Procedures for using pay schedules.** (1) The pay ~~schedules~~ *schedule* provided in 2-18-312 must be implemented as follows:

(a) The pay ~~schedules~~ *schedule* provided in 2-18-312 ~~indicate~~ *indicates* the entry salary and market salary for each grade for positions classified under the provisions of part 2 of this chapter.

(b) Each employee newly hired by the state of Montana must be hired at the entry rate, except as provided in subsections (6) through (9).

(c) On the first day of the first complete pay period in fiscal year ~~2002~~ *2004*, each employee is entitled to the amount of the employee's base salary as it was on June 30, ~~2001~~ *2003*.

~~(d) Effective on the first day of the pay period that includes an employee's anniversary date during the fiscal years ending June 30, 2002, and June 30, 2003, the employee's base salary must be increased by 4% or by a lesser amount so that the employee's base salary after the increase does not exceed the maximum salary of the pay grade as provided in subsection (1)(f). An employee's base salary increases resulting from subsection (1)(c) and this subsection may not exceed a maximum of 4% in each fiscal year. For employees hired on or before September 30, 1994, the anniversary date is October 1.~~

*(d) Effective on the first day of the first complete pay period that includes January 1, 2005, the base salary of each employee must be increased by an amount equal to 25 cents an hour or by a lesser amount so that the employee's base salary after the increase does not exceed the maximum salary of the pay grade as provided in subsection (1)(f).*

(e) An employee's base salary may be no less than the entry salary for the employee's assigned grade.

(f) The maximum salary for each grade is determined by subtracting the entry salary from the market salary and adding that amount to the market salary.

(2) The pay ~~schedules~~ *schedule* provided in 2-18-312 and the provisions of subsection (1) of this section do not apply to those teachers or blue-collar occupations compensated under the pay schedules provided in 2-18-313 and 2-18-315.

(3) The pay schedules provided in 2-18-313 and 2-18-315 must be implemented as follows:

(a) (i) The pay ~~schedules~~ *schedules* provided for in 2-18-313 ~~indicate~~ *indicate* the annual compensation for teachers employed under the authority of the department of corrections or the department of public health and human services for fiscal years ~~2002~~ *2004* and ~~2003~~ *2005*.

(ii) The compensation of each teacher on July 1, ~~2001~~ *2003*, is the same as it was on June 30, ~~2001~~ *2003*.

~~(iii) On the first day of the first pay period that includes October 1 of each fiscal year, a teacher employed under the authority of the department of public health and human services or the department of corrections before October 1, 1994, shall advance one step on the appropriate pay schedule adopted in 2-18-313. A teacher hired after October 1, 1994, shall advance on the teacher's actual anniversary date.~~

*(iii) Effective on the first day of the first complete pay period that includes January 1, 2005, the base salary of each teacher employed in the department of public health and human services and the department of corrections is the amount provided for the teacher's step and education level under 2-18-313(2). This subsection (3)(a)(iii) does not provide for a step advancement.*

(b) The pay ~~schedules~~ *schedules* provided in 2-18-315 ~~indicate~~ *indicate* the maximum hourly compensation for fiscal years ending June 30, ~~2002~~ *2004*, and June 30, ~~2003~~ *2005*, for employees in apprentice trades and crafts and other blue-collar occupations recognized in the state blue-collar classification plan who are members of units that have collectively bargained separate classification and pay plans.

(c) The compensation of each employee on the first day of the first pay period in each fiscal year is that amount corresponding to the grade occupied on the last day of the preceding fiscal year.

(4) (a) (i) ~~A If the legislature authorizes a pay increase for state employees, a member of a bargaining unit may not receive a pay increase until the employer's collective bargaining representative receives written notice that the employee's bargaining unit has ratified a completely integrated collective bargaining agreement covering the biennium ending June 30, 2003.~~

(ii) If ratification of a completely integrated collective bargaining agreement, as required by subsection (4)(a)(i), is not completed by ~~July 1, 2001~~ *the date on which a legislatively authorized pay increase is implemented*, retroactivity to that date may be negotiated.

(iii) If ratification of a completely integrated collective bargaining agreement, as required by subsection (4)(a)(i), is not completed by ~~July 1, 2001~~ *the date on which a legislatively authorized pay increase is implemented*, members of the bargaining unit must continue to receive the compensation that they were receiving ~~as of June 30, 2001~~, until an agreement is ratified.

(b) Methods of administration not inconsistent with the purpose of this part and necessary to properly implement the pay schedules and adjustments provided in 2-18-312, 2-18-313, 2-18-315, and this section may be provided for in collective bargaining agreements.

(5) The current wage or salary of an employee may not be reduced by the implementation of the pay schedules provided for in 2-18-312, 2-18-313, and 2-18-315.

(6) The department may authorize a separate pay schedule for classes of medical professionals if the rates provided in 2-18-312 are not sufficient to attract and retain fully licensed and qualified professionals.

(7) (a) The department may develop and implement an alternative pay and classification plan for certain classes, occupations, and work units. Pay for employees in the alternative pay and classification plan may be established and changed based on demonstrated competencies and accomplishments, on the labor market, and on other situations defined by the department.

(b) To the extent that the plan applies to employees within a collective bargaining unit, the implementation of the plan is a negotiable subject under 39-31-305.

(8) The department may develop programs that enable the department to mitigate problems associated with difficult recruitment, retention, transfer, or other exceptional circumstances. To the extent that the program applies to employees within a collective bargaining unit, it is a negotiable subject under 39-31-305.

(9) The department shall review the competitiveness of the compensation provided to all occupations under this part. If the department finds that substantial problems exist with recruitment and retention because of inadequate salaries when compared to competing employers, the department may establish criteria allowing an adjustment in pay or classification to mitigate the problems. To the extent that these adjustments apply to employees within a collective bargaining unit, the implementation of these adjustments is a negotiable subject under 39-31-305."

**Section 3.** Section 2-18-312, MCA, is amended to read:

**"2-18-312. Statewide pay schedules schedule.** (1) The statewide classification pay schedule for the period beginning on the first day of the first full pay period in fiscal year ~~2002~~ 2004, is as follows:

Annual Hours ~~2080~~ Note: Does Not Include Insurance  
 Pay Matrix ~~State~~ Matrix Type ~~Annual~~  
 Pay Range: Entry Salary to Market Salary

<del>GRADE</del>	<del>ENTRY SALARY</del>	<del>MARKET SALARY</del>
1	9,075	10,677
2	9,776	11,527
3	10,529	12,447
4	11,346	13,445
5	12,262	14,562
6	13,316	15,854
7	14,456	17,249

8	15,748	18,834
9	17,135	20,546
10	18,676	22,447
11	20,365	24,534
12	22,241	26,859
13	24,286	29,403
14	26,560	32,230
15	29,074	35,370
16	31,884	38,888
17	35,036	42,833
18	38,330	46,983
19	42,039	51,644
20	46,170	56,885
21	50,754	62,660
22	55,877	69,154
23	61,655	76,498
24	68,147	84,760
25	75,329	93,924

(2) Effective on the first day of the pay period that includes October 1, 2001, the statewide classification pay schedule is as follows:

Annual Hours — 2080 ————— Note: Does Not Include Insurance  
 Pay Matrix — State ————— Matrix Type — Annual  
 Pay Range: Entry Salary to Market Salary

GRADE	ENTRY SALARY	MARKET SALARY
1	9,384	11,040
2	10,108	11,919
3	10,887	12,870
4	11,732	13,902
5	12,679	15,057
6	13,769	16,393
7	14,948	17,835
8	16,283	19,474
9	17,718	21,245
10	19,311	23,210
11	21,057	25,368
12	22,997	27,772
13	25,112	30,403
14	27,463	33,326
15	30,063	36,573

16	32,968	40,210
17	36,227	44,289
18	39,643	48,580
19	43,468	53,400
20	47,740	58,819
21	52,480	64,790
22	57,777	71,505
23	63,751	79,099
24	70,464	87,642
25	77,890	97,117

(3) ~~Effective on the first day of the pay period that includes October 1, 2002, the statewide classification pay schedule is as follows:~~

Annual Hours — 2080

Note: Does Not Include Insurance

Pay Matrix — State

Matrix Type — Annual

Pay Range: Entry Salary to Market Salary

GRADE	ENTRY SALARY	MARKET SALARY
1	9,703	11,415
2	10,452	12,324
3	11,257	13,308
4	12,131	14,375
5	13,110	15,569
6	14,237	16,950
7	15,456	18,442
8	16,837	20,136
9	18,320	21,967
10	19,968	23,999
11	21,773	26,231
12	23,779	28,716
13	25,966	31,436
14	28,397	34,459
15	31,085	37,816
16	34,089	41,577
17	37,459	45,795
18	40,990	50,232
19	44,946	55,215
20	49,363	60,819
21	54,264	66,993
22	59,741	73,936
23	65,919	81,788

24	72,860	90,622
25	80,538	100,419"

**Section 4.** Section 2-18-313, MCA, is amended to read:

**"2-18-313. Teachers' pay schedules- schedules.** (1) The pay schedule for teachers for the period ~~that includes October 1, 2001, until~~ *beginning* the first day of the *first full* pay period ~~that includes October 1, 2002, in fiscal year 2004~~ is as follows:

~~Annual Hours — 2080~~ ~~Note: Does Not Include Insurance~~  
~~Term — Twelve Months~~ ~~Matrix Type — Annual~~

Education Level						
STEP	BA	BA+15	BA+30	BA+45	BA+60	BA+75
<del>1</del>	<del>26,085</del>	<del>26,867</del>	<del>27,673</del>	<del>28,503</del>	<del>29,359</del>	<del>30,239</del>
<del>2</del>	<del>26,867</del>	<del>27,673</del>	<del>28,503</del>	<del>29,358</del>	<del>30,239</del>	<del>31,147</del>
<del>3</del>	<del>27,673</del>	<del>28,503</del>	<del>29,358</del>	<del>30,239</del>	<del>31,147</del>	<del>32,082</del>
<del>4</del>	<del>28,503</del>	<del>29,358</del>	<del>30,239</del>	<del>31,147</del>	<del>32,082</del>	<del>33,044</del>
<del>5</del>	<del>29,358</del>	<del>30,239</del>	<del>31,147</del>	<del>32,082</del>	<del>33,044</del>	<del>34,035</del>
<del>6</del>	<del>30,239</del>	<del>31,147</del>	<del>32,082</del>	<del>33,044</del>	<del>34,035</del>	<del>35,056</del>
<del>7</del>	<del>31,147</del>	<del>32,082</del>	<del>33,044</del>	<del>34,035</del>	<del>35,056</del>	<del>36,108</del>
<del>8</del>	<del>32,082</del>	<del>33,044</del>	<del>34,035</del>	<del>35,056</del>	<del>36,108</del>	<del>37,191</del>
<del>9</del>	<del>33,044</del>	<del>34,035</del>	<del>35,056</del>	<del>36,108</del>	<del>37,191</del>	<del>38,307</del>
<del>10</del>	<del>34,035</del>	<del>35,056</del>	<del>36,108</del>	<del>37,191</del>	<del>38,307</del>	<del>39,457</del>
<del>11</del>	<del>35,056</del>	<del>36,108</del>	<del>37,191</del>	<del>38,307</del>	<del>39,457</del>	<del>40,640</del>
<del>12</del>	<del>36,108</del>	<del>37,191</del>	<del>38,307</del>	<del>39,457</del>	<del>40,640</del>	<del>41,858</del>
<del>13</del>	<del>37,191</del>	<del>38,307</del>	<del>39,457</del>	<del>40,640</del>	<del>41,858</del>	<del>43,114</del>

(2) ~~Effective on the first day of the pay period that includes October 1, 2002, the pay schedule for teachers is as follows:~~

~~Annual Hours — 2080~~ ~~Note: Does Not Include Insurance~~  
~~Term — Twelve Months~~ ~~Matrix Type — Annual~~

Education Level						
STEP	BA	BA+15	BA+30	BA+45	BA+60	BA+75
1	27,129	27,942	28,780	29,643	30,532	31,449
2	27,942	28,780	29,643	30,532	31,449	32,393
3	28,780	29,643	30,532	31,449	32,393	33,365
4	29,643	30,532	31,449	32,393	33,365	34,366
5	30,532	31,449	32,393	33,365	34,366	35,396
6	31,449	32,393	33,365	34,366	35,396	36,459
7	32,393	33,365	34,366	35,396	36,459	37,552
8	33,365	34,366	35,396	36,459	37,552	38,679
9	34,366	35,396	36,459	37,552	38,679	39,840
10	35,396	36,459	37,552	38,679	39,840	41,035



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11	36,459	37,552	38,679	39,840	41,035	42,266
12	37,552	38,679	39,840	41,035	42,266	43,532
13	38,679	39,840	41,035	42,266	43,532	44,839

(2) Effective on the first day of the pay period that includes January 1, 2005, the pay schedule for teachers is as follows:

Annual Hours — 2080

Note: Does Not Include Insurance

Term — Twelve Months

Matrix Type — Annual

STEP	Education Level					
	BA	BA+15	BA+30	BA+45	BA+60	BA+75
1	27,649	28,462	29,300	30,163	31,052	31,969
2	28,462	29,300	30,163	31,052	31,969	32,913
3	29,300	30,163	31,052	31,969	32,913	33,885
4	30,163	31,052	31,969	32,913	33,885	34,886
5	31,052	31,969	32,913	33,885	34,886	35,916
6	31,969	32,913	33,885	34,886	35,916	36,979
7	32,913	33,885	34,886	35,916	36,979	38,072
8	33,885	34,886	35,916	36,979	38,072	39,199
9	34,886	35,916	36,979	38,072	39,199	40,360
10	35,916	36,979	38,072	39,199	40,360	41,555
11	36,979	38,072	39,199	40,360	41,555	42,786
12	38,072	39,199	40,360	41,555	42,786	44,052
13	39,199	40,360	41,555	42,786	44,052	45,359

**Section 5.** Section 2-18-315, MCA, is amended to read:

**“2-18-315. Blue-collar pay schedules—schedules.** (1) The pay schedule for blue-collar workers for the period from July 1, 2001, until beginning the first day of the first full pay period that includes October 2001 in fiscal year 2004 is as follows:

Annual Hours — 2080

Note: Does Not Include Insurance

Pay Matrix — Blue Collar

Matrix Type — Hourly

Grade	\$/Hour
B1	11.275
B2	11.675
B3	12.075
B4	12.475
B5	12.875
B6	13.275
B7	13.675
B8	14.075
B9	14.475



B11	16.395
B12	16.795
B13	17.195
B14	17.595

(2) Effective on the first day of the first full pay period that includes January 1, 2005, the pay schedule for blue collar workers is as follows:

Annual Hours — 2080

Note: Does Not Include Insurance

Term — Blue Collar

Matrix Type — Hourly

Grade	\$/Hour
B1	12.645
B2	13.045
B3	13.445
B4	13.845
B5	14.245
B6	14.645
B7	15.045
B8	15.445
B9	15.845
B10	16.245
B11	16.645
B12	17.045
B13	17.445
B14	17.845

**Section 6.** 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) For employees defined in 2-18-701 and, for members of the legislature, ~~the employer contribution for group benefits is \$295 a month for the period from July 2001 through December 2001, \$325 a month for the period from January 2002 through December 2002, and \$366 a month for January 2003 and for each succeeding month. For~~ and for employees of the Montana university system, the employer contribution for group benefits is ~~\$325~~ \$410 a month for the period from July 2001 2003 through June 2002 2004 and ~~\$366~~ \$460 a month for the period from July 2002 2004 through June 2003 2005 and for each succeeding month. ~~When~~ 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. 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 and of local government units, the employer's premium contributions may exceed but may not be less than \$10 a month. Subject to the public hearing requirement provided in 2-9-212(2)(b), the increase in a local government's property tax levy for premium contributions for group benefits beyond the amount of contributions in effect on July 1, 1999, is not subject to the mill levy calculation limitation provided for in 15-10-420.

(4) 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.

(5) 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.

(6) 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 7. Appropriation.** (1) The following money for the indicated fiscal years is appropriated to the listed agencies to implement the adjustments provided for in [this act]:

	Fiscal Year 2004		Fiscal Year 2005	
	General Fund	Other Funds	General Fund	Other Funds
Legislative Branch	24,969	6,399	110,035	28,200
Consumer Counsel		1,277		5,462
Judicial Branch	85,726	12,247	330,568	47,224
Executive Branch	1,042,381	1,926,519	4,474,666	8,248,297
University System	1,087,384	1,182,729	2,883,488	3,136,320

(2) The following money is appropriated for the biennium to the office of budget and program planning to be distributed to agencies when personnel vacancies do not occur, retirement costs exceed agency resources, or other contingencies arise:

	Fiscal Year 2004	
	General Fund	Other Funds
Personal Services Contingency	1,500,000	3,000,000

**Section 8. Effective date.** [This act] is effective July 1, 2003.

Approved May 5, 2003